TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~249~~ 614

THE LIVERPOOL AND LONDON LIFE AND FIRE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

HENRY K. OLIVER, TREASURER AND RECEIVER GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

FILED AUGUST 20, 1869.

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1 [SEAL.] UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme judicial court of the Commonwealth of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme judicial court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between Henry K. Oliver, treasurer & receiver general of the Commonwealth of Massachusetts, plaintiff, and the Liverpool & London Life & Fire Insurance Company, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Liverpool & London Life & Fire Insurance Company, as by this complaint appears; we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this twelfth day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States.

Allowed by—

R. A. CHAPMAN,
Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts.

2 THE UNITED STATES OF AMERICA:

Commonwealth of Massachusetts to Henry K. Oliver, treasurer and receiver general of the Commonwealth of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme judicial court of the Commonwealth of Massachusetts for Suffolk County, wherein the Liverpool & London Life and Fire Insurance Company are plaintiffs in error, and you are defendant in

error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard A. Chapman, chief justice of the supreme judicial court of the Commonwealth of Massachusetts, this twelfth day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

R. A. CHAPMAN,
Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts.

3 ESSEX, *ss:*

I hereby certify that I this day delivered a true copy of the within citation, by me attested, to the within-named Henry K. Oliver, in hand.

March 13th, A. D. 1869.

DANIEL POTTER,
Deputy Sheriff.

COMMONWEALTH OF MASSACHUSETTS, *Essex, ss:*

On this sixteenth day of March, in the year of our Lord eighteen hundred & sixty-nine, personally appeared the above-named Daniel Potter, deputy sheriff, before me, the subscriber, and made oath that the above return, by him signed, is true.

J. W. PERRY,
Justice of the Peace.

Fees:

Service	$00 50
Copy & stamp	1 05
Travel	1 60
	$3 15

(Indorsed:) The Liverpool & London L. & F. In. Co. vs. Henry K. Oliver. Citation, &c.

4 COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

At the supreme judicial court, sitting at Boston, in said county of Suffolk, for the hearing of cases in equity, at the October term of said court, begun and holden on the first Tuesday of October, being the sixth day of said month, in the year of our Lord eighteen hundred and sixty-eight, and on other days between said first Tuesday of October and the first Tuesday of April, eighteen hundred and sixty-nine.

Henry K. Oliver, treasurer and receiver general of the Commonwealth of Massachusetts, against the Liverpool and London Life and Fire Insurance Company, in a bill in equity, in the words following, to wit:

To the honorable justices of the supreme judicial court, sitting in equity:

Henry K. Oliver, treasurer and receiver general of the Commonwealth of Massachusetts, sheweth unto said court that the Liverpool and London Life and Fire Insurance Company is a corporation created by the laws of Great Britain, and is an association of persons associated under

the laws thereof as a fire insurance company, and is not incorporated or associated under the laws of Massachusetts or any of the United States, and that said corporation and association is not located within this commonwealth, nor do any of the members thereof, or associates therein, reside in this commonwealth, and that George William Gordon, of Boston, in said county, is the agent and attorney thereof, within this commonwealth, and is duly authorized and empowered, in the name and on behalf of the said company, to receive and accept the service of any process, notice, or pleading, and to appear thereto in person, or by attorney or counsel, in any action, suit, or proceeding against said company, and that said service is by the laws of this commonwealth, and the resolve and power of said company, equivalent to service upon said company, and binds the same and the officers and members thereof.

5 And that said Gordon, as such agent and attorney, does business for said company, and receives premiums, and makes contracts and policies of insurance against fire in this commonwealth; and by the laws thereof, viz., by the provisions of a statute enacted on the thirtieth day of April, A. D. 1862, being the 224th chapter of the laws of that year, said company is required and made liable to pay to the treasurer of the commonwealth, annually, a tax of four per cent. upon all premiums charged or received on contracts made in this commonwealth for the insurance of property, or received or collected by agents within this commonwealth, which tax shall be assessed by said treasurer for the year ending October thirty-first, and shall be paid within ten days after the first Monday in December in each year. And said treasurer hath only assessed upon said company a tax for the year ending October thirty-first, A. D. 1864, of four per cent. upon the premiums aforesaid, which tax is based upon the return made by said Gordon, as agent, dated November the fifteenth, A. D. 1864, showing the amount of said premiums to be seventy-one thousand eight hundred and ninety-nine $\frac{67}{100}$ (71,899 67) dollars, the tax upon which is twenty-eight hundred and seventy-five $\frac{98}{100}$ (2,875 98) dollars, of which said company and said Gordon have been duly notified, and they have been requested to pay the same, which is now overdue, and they neglect and refuse to pay the same.

Wherefore, pursuant to said statute, the complainant prayeth your honors to grant a writ of injunction, restraining said corporation and association, and said Gordon, as said agent and attorney, and all other agents and servants of said company, or said Gordon, from the further prosecution of the business of said company, until all said tax, with costs and interest, shall be fully paid.

HENRY K. OLIVER,
Treasurer of Massachusetts.

Filed Dec. 22, 1864.

This bill was filed on the twenty-second day of December, eighteen hundred and sixty-four, and was entered in this court at the October term thereof in said year, when and where the parties appeared, and the same was continued until the April term, eighteen hundred and sixty-five, when the defendants filed their answer, as follows:

The answer of the Liverpool and London Life and Fire Insurance Company, defendants, to the petition for an injunction of Henry K. Oliver, treasurer and receiver general of the commonwealth, complainant.

The defendants admit that they are not incorporated or associated under the laws of Massachusetts, or any of the United States, and that

they are associated as a fire insurance company under the laws of Great Britain; and the defendants further admit that George William Gordon, of Boston, in said county, is their agent and attorney within this commonwealth, and is duly authorized, in their name, and in their behalf, to receive the service of any process against them, and in their behalf to appear in person or by attorney in any proceeding against them, as the complainant has alleged; and the defendants further admit that the said Gordon, as their agent and attorney, does business for the said com-
6 pany, and receives premiums, and makes contracts and policies of insurance against fire within this commonwealth, and that the said treasurer hath duly assessed upon them a tax for the year ending October 31, A. D. 1864, based upon the return made by the said Gordon, as agent, for twenty-eight hundred and seventy-five and $\frac{98}{100}$ dollars, of which they have been duly notified and requested to pay, as the complainant have alleged.

But the defendants deny that, by the provisions of the statute enacted on the thirtieth day of April, A. D. 1862, being chapter 224 of the acts of that year, they are required and made liable to pay to the treasurer of the commonwealth, annually, a tax of four per cent., as the complainant has alleged; and they deny that they are liable for the tax which he has assessed.

And the defendants, for further answer, say that the aforesaid chapter 224 of the acts of the year 1862 applies only to incorporated companies, and that the Liverpool and London Life and Fire Insurance Company is not an incorporated company, but is a company consisting of natural persons, some of whom are citizens and residents of Great Britain, and some of whom are citizens and residents of the State of New York, formed for the purpose of conducting the business of insurance, for their joint profits, under certain deeds of settlement, and having the legal character of a partnership, the members thereof having the rights and liabiliies of partners in respect to third persons, and being liable inter se according to the stipulations of their deeds of settlement, a copy of which, and of the acts of Parliament relating hereto, are hereto annexed, and marked Exhibit A.

And the defendants, for further answer, say that if the aforesaid chapter 224 of the acts of the year 1862 be not limited to incorporated companies, but is applicable to companies not incorporated, but associated under the laws of any government or State other than one of the United States, it cannot be legally applied to the Liverpool and London Life and Fire Insurance Company, a part of whose members are citizens of the State of New York; because in respect to such members, such application would be in violation of article 4, section 2, of the Constitution of the United States, which secures to the citizens of such State all the privileges and immunities of citizens in the several States.

And the defendants, for further answer, say that so much of the aforesaid chapter 224 of the acts of 1862 under which this tax is sought to be enforced, which, by a differential tax, imposes a greater burden upon insurance companies incorporated or associated under the laws of any government or state other than one of the United States, than is imposed upon citizens of Massachusetts doing the same business within the State, is not applicable to the said Liverpool and London Life and Fire Insurance Company, which is composed in part of British subjects; because such application would be in conflict with the treaty of 1815, between the United States and Great Britian, which secures to British subjects the privileges of trade and commerce within the limits of any of the States of the United States.

And the defendants further say that all of the matters and things herein alleged they are prepared to maintain and prove, as this honorable court shall direct; and they therefore pray that this petition for an injunction may be dismissed.

GEORGE WILLIAM GORDON,
General Agent Liverpool and London Fire and Life Insurance Company.

C. CUSHING, *Respondents' Solicitor.*

Filed June 15, 1865.

Thereupon the cause was continued unto the next October term, and so from term to term unto the last April term, when the defendants had leave to amend their answer according to the following motion:

7 Supreme judicial court, April term, 1868.

And now the defendants ask leave of this honorable court to amend their answer by striking out of the first paragraph thereof the words following, viz, "And that they are associated as a fire assurance company under the laws of Great Britain," and insert instead thereof, the words following: "And they allege they are associated together under the laws of Great Britain as a partnership of natural persons, some of whom are citizens and residents of Great Britain, and some of whom are citizens and residents of the State of New York, for the purpose of transacting and conducting the business of life and fire insurance, under the partnership, name, and style of the 'Liverpool and London Fire and Life Insurance Company.'"

By their solicitor and attorney,

J. G. ABBOTT.

Filed July 24, 1868.

Whereupon the following agreed statement of facts was filed:

Statement of facts.

Supreme judicial court, April term, 1868.

HENRY K. OLIVER, TREASURER, &c.,
vs.
LIVERPOOL AND LONDON LIFE AND FIRE INSURANCE COMPANY. } In equity.

And now the parties in said case agree that said case shall be heard on the bill and answer and additional facts, hereby agreed viz: The commonwealth shall have the right to use and refer to, at the hearing, certain instruments, copies of which marked AA, B, C, D, and E, are hereto annexed and made a part hereof, it being agreed that said instruments were filed by the defendants, or their duly authorized agents, in the public offices of the commonwealth at or about the times of their respective dates, the said defendants reserving the right of objection to the competency, relevancy, and effect of such papers to the same extent as if the objection had been made when said papers were offered in evidence.

The defendants shall have the right to use and refer to the copies of agreements, deeds, instruments, and acts of the British Parliament an-

nexed to their answer, it being agreed as a fact that said agreements, deeds, and instruments were duly executed and delivered, and said acts of Parliament passed, and that these defendants have associated and acted under the same; and that under and by virtue of said agreements, deeds, instruments, and acts of Parliament certain citizens of New York have become members of the defendants' association, subject to all its duties and liabilities, and entitled to all its rights and benefits, to the same extent as the original members of said association are entitled and subject under said instruments and acts; the commonwealth reserving the right of objection to the competency, relevancy, and effect of such instruments, acts, and facts to the same extent as if said objection had been made when said instruments, acts, and facts were offered in evidence.

8 It is agreed that the defendants have been engaged in the insurance business in this commonwealth from the year 1854 to the present time, and have annually from that time made returns of their condition and standing in the forms required by the laws of this commonwealth, and signed by their resident secretary in the city of New York; and that in said returns, in all but two cases, the answer to the question when incorporated, is: "A. D. 1836. Liability of the whole body of stockholders unlimited;" in the return for 1856, the answer to that question is: "Not incorporated. Stockholders personally liable;" and in the return for 1865, the question is: "When established?" the word "incorporated" in the printed form being stricken out and "established" put in, by the defendants' secretary in writing, and the answer is the same first given; and that the defendants have annually from 1854, except for the year ending October 31, 1864, paid to the commonwealth taxes, according to the laws thereof, upon the premiums collected in this commonwealth by their agents, several payments of such taxes having been made under protest, however, by the defendants.

J. G. ABBOTT, *Solicitor for Defendants.*
CHARLES ALLEN, *Attorney General.*

AA.

Know all men by these presents that the Liverpool and London Fire and Life Insurance Company of Liverpool and London, England, and of New York, in the State of New York, does by these presents constitute and appoint Edwards and Brewster, of Boston, in the Commonwealth of Massachusetts, insurance agents, citizens of said commonwealth and residents therein, to be the attorneys of said corporation, with power and authority to accept service of all lawful processes against said company in said commonwealth, and to cause an appearance to be entered for said corporation, in any action whatsoever, in like manner as if said corporation had existed and been duly served in process in said commonwealth.

In testimony whereof the said Liverpool and London Life and Fire Insurance Company have hereunto caused their corporate seal to be affixed to this instrument, and the same to be signed by their secretary, at New York, this twenty-fifth September, A. D. 1852.

ALFRED PELL,
Resident Secretary, N. Y.

B.

NEW YORK, 12 *October*, 1854.

At a meeting of the board of directors of the Liverpool and London

Fire and Life Insurance Company of Liverpool, London, and New York, held this day, Mr. Oliver Brewster (of the late firm of Edwards & Brewster) was appointed agent and attorney of the said company in Boston, and the secretary authorized to furnish him with the necessary certificates of agency.

Witness our hands and the seal of the company at New York, this fourteenth day of October, one thousand eight hundred and fifty-four.

JOSEPH FOWLER,
C. W. FABER,
MORTIMER LIVINGSTON,
Directors.

Attest: ALFRED PELL, *Resident Secretary.*

C.

STATE OF NEW YORK, *City of New York:*

Know all men by these presents that the Liverpool and London Fire and Life Insurance Company do hereby make, constitute, and appoint Oliver Brewster, of the city of Boston and State of Massachusetts, its true and lawful attorney in and for the said city of Boston and its vicinity, to effect fire and life insurance in the name of the said company upon buildings, goods, wares, and merchandise; and on the lives
9 of men and women; and to issue policies signed by the directors and secretary of said company; and to assent to the transfer and assignment of the same, which policies, so issued and assigned, shall have full force and effect to bind the said company; also to institute, appear to, and defend suits in any of the courts of the said State of Massachusetts, in behalf of, or instituted against, the said company, or to adjust and settle all claims against the same, arising under the policies so issued, hereby giving and granting unto the said Oliver Brewster full power and authority in the premises by virtue hereof.

In testimony whereof the Liverpool and London Fire and Life Insurance Company has caused its common seal and the signatures of three of its directors and of the secretary to be affixed, at New York aforesaid, this fourteenth day of October, in the year one thousand eight hundred and fifty-four.

JOSEPH FOWLER.
C. W. FABER.
MORTIMER LIVINGSTON.

Attest: ALFRED PELL, *Resident Secretary.*

D.

UNITED STATES OF AMERICA, *State of New York:*

Know all men by these presents that the London and Liverpool Fire and Life Insurance Company of London, Liverpool, and New York does authorize and empower Oliver Brewster, of the city of Boston, in the State of Massachusetts, to acknowledge service of legal process for and in behalf of the said company, hereby consenting that service of such process upon the said Oliver Brewster shall be taken and held as valid as if served upon the said company according to the laws of the State of Massachusetts.

Witness the hand of the secretary and the seal of the said company this fourteenth day of October, anno Domini one thousand eight hundred and fifty-four.

ALFRED PELL,
Resident Secretary.

E.

"*Resolved*, That George W. Gordon, esq., agent of the Liverpool and London Fire and Life Insurance Company in Boston, be, and he is hereby, fully authorized and empowered, in the name and on behalf of the said company, to receive and accept the service of any process, notice, or pleading, and appear thereto, in person or by attorney or counsel, in any action, suit, or proceeding now or hereafter brought against the said company.

"*And resolved further*, That such service as aforesaid shall in all cases be equivalent to services upon, and shall bind, the said company and the officers and members thereof."

By order of the board:

ALFRED PELL,
Resident Secretary, N. Y.

NEW YORK, *November* 14, 1856.

10 And the case coming on to be heard was reserved by the presiding justice for the consideration of the full court, and continued unto the present term.

And now it is ordered by the supreme judicial court for the commonwealth, by its rescript, that the clerk of the supreme judicial court for the county of Suffolk make the following entry under this case in the docket of said court:

Decree for the plaintiff, to be entered in conformity with the prayer of the bill.

And the decree is entered as follows:

This cause having been fully heard and considered, it is declared and adjudged by this court that there is due from the respondents to the Commonwealth of Massachusetts the sum of two thousand eight hundred and seventy-five dollars and ninety-eight cents, with interest from the 15th day of December, A. D. 1864, for a tax of four per cent. assessed under and by virtue of the provisions of the second section of the two hundred and twenty-fourth chapter of the acts of the general court of said commonwealth of the year 1862, on premiums charged or received by the respondents on contracts made in said commonwealth
11 for the insurance of property, and received and collected by the agents of the respondents in said commonwealth during the year ending on the 31st day of October, A. D. 1864.

And it is thereupon ordered, adjudged, and decreed that an injunction issue, restraining the respondents, and their agents, servants, and attorneys, from the further prosecution of the business of the respondents in this commonwealth until said tax, with interest as aforesaid, and the costs of this suit, to be taxed by the clerk for the complainant, shall have been fully paid.

March 6th, 1869.

Whereupon the following certificate is filed of record:

Supreme judicial court.

HENRY K. OLIVER, TREAS'R, &c.,
vs.
LIVERPOOL & LONDON LIFE & FIRE INSURANCE Company. } In equity.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

I hereby certify that in the above-entitled suit there was drawn
12 in question the validity of a statute or of an authority exercised under a statute of said commonwealth, entitled "An act to levy taxes on certain insurance companies and on depositors in savings banks," as being repugnant to a treaty of the United States made with the Kingdom of Great Britain in the year 1815, and the Constitution of the United States, and the decision was in favor of the validity of said statute, and of the authority exercised under said statute of said commonwealth; and also that in said suit there was drawn in question the construction of a clause of the Constitution of the United States, and of a treaty made with the Kingdom of Great Britain, and the decision was against the right, title, privilege, and exemption specially set up and claimed under said clause of the said Constitution and said treaty; that said judgement was final; that said court is the highest court in said commonwealth in which a judgement could be obtained in said suit.

This certificate is hereby made a part of the record in said suit.

R. A. CHAPMAN,
Chief Justice of the Supreme Judicial Court.

Filed March 6th, 1869.

13 COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

And now the judges of the supreme judicial court of said commonwealth make return of this writ by annexing hereto and sending herewith, under the seal of the said court, as within commanded, a true and attested copy of the record and process in the suit within mentioned, and of all papers and exhibits filed therein, and of all proceedings therein.

In testimony whereof I, George C. Wilde, clerk of said court, within and for said county of Suffolk, have hereunto set my hand and the seal of said court this thirteenth day of March, in the year of our Lord eighteen hundred and sixty-nine.

[SEAL.] GEO. C. WILDE, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

14 *Bond on writ of error.*

Know all men by these presents that we, the Liverpool & London Life & Fire Insurance Company as principals, and George W. Gordon, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, as surety, are held and firmly bound unto Henry K. Oliver, treasurer and receiver general of the Commonwealth of Massachusetts, in the full and just sum of four thousand dollars, to be paid to the said Henry K. Oliver, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated the twelfth day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, before the justices of the supreme judicial court, on the sixth day of March, A. D. 1869, in a suit depending in said court between said Henry K. Oliver, plaintiff, and said Liverpool & London Life & Fire Insurance Company, defendants, judgment was rendered against the said Liverpool & London Life & Fire Insurance Company, and the said Liverpool & London Life & Fire Insurance Company having procured a writ of error and filed a copy thereof in the clerk's

office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Henry K. Oliver, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Liverpool & London Life & Fire Insurance Company shall prosecute their said writ of error to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

The Liverpool & London Fire & Life Ins. Company,
By GEO. W. GORDON, [L. S.]
Their Agent & Attorney.
GEO. WM. GORDON. [L. S.]

Signed, sealed, and delivered in presence of—
J. G. ABBOTT.

Approved:

R. A. CHAPMAN,
Chief Justice of the Supreme Judicial Court for the Commonwealth of Massachusetts.

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the supreme judicial court of Massachusetts for Suffolk County.

Attest: GEO. C. WILDE, *Clerk S. J. Court.*

15 A.

Deed of settlement.

This indenture, made the twenty-first day of May, in the year of our Lord 1836, between George Holt, Thomas Booth, Richard Edwards, Thomas Brocklebank, William Dixon, William Earle, the younger, Joseph Christopher Ewart, Ormerod Heyworth, Samuel Taylor Hobson, Joseph Hornby, George Hall Lawrence, Andrew Low, Alexander Macgregor, Andrew Melly, James Moon, Lewin Mozley, William Nicol, Charles Stewart Parker, William Robert Preston, James Powell, and John Ridgway, all of Liverpool, in the county of Lancaster, esquires; and the several other persons whose names are hereunto subscribed and seals affixed, (except the persons who are next hereinafter described as parties hereto of the second part,) of the first part, and Sir Thomas Brancker, of Liverpool aforesaid, knight, and William Brown and Adam Hodgson, both of Liverpool aforesaid, esquires, of the second part, witnesseth that, for the considerations, intents, and purposes hereinafter expressed, each of the several persons parties hereto of the first part, for himself or herself, and for his or her own heirs, executors, and administrators, and for and concerning only the acts, deeds, and defaults of himself or herself, and of his or her own heirs, executors, or administrators only, but not further or otherwise, doth hereby

severally and respectively covenant, declare, and agree with and to the said Sir Thomas Brancker, William Brown, and Adam Hodgson, their executors, administrators, and assigns, (in trust for the copartners or proprietors, for the time being, in the company hereby established,) in manner following, viz:

The company established.

Section 1st. That the several persons parties hereto of the first part, (who are hereinafter distinguished by the title of proprietors,) and such other persons as shall from time to time become proprietors, as hereinafter mentioned, shall and will become and be, and while holding shares in the capital of the company hereby established, continue and constitute, a company or association by the name of "The Liverpool Fire and Life Insurance Company," for the purposes, and to be managed and conducted pursuant to the several regulations, provisions, and conditions hereinafter expressed or contained, and subject to the several powers hereinafter mentioned; and the said company shall be, and is hereby declared to be, formed upon and from the day of the date of these presents accordingly, and shall continue until the same shall be dissolved under the provisions hereinafter contained for that purpose.

Style or firm.

The business.

2nd. That the business of the company shall be to make and effect insurances on houses, warehouses, and buildings, shipping in port, goods, wares, merchandise, farming stock, utensils, and property of all descriptions, against loss or damage by fire, insurances on lives and survivorships, the sale and purchase of annuities, reversions, and contingent interests, and the endowment of children; and generally to carry on the business usually called or known as fire insurance and life insurance, and all matters connected therewith and allowed by law, or under the rules herein declared.

Capital and shares.

3rd. That the capital of the company shall be two millions pounds sterling, divided into 100,000 shares of £20 each; but such capital may be increased or decreased, as hereinafter expressed; and the allotment to subscribers or purchasers of so many of the said 100,000 shares as have not at the date of these presents been subscribed for, and also of any increased number of shares, shall exclusively appertain to, and be made by, the directors for the time being, at their discretion; but nevertheless, in making such allotment, it is understood and intended that (except in such cases in which they may deem it expedient to act differently) the directors shall give the preference to persons possessed of insurable property, or engaged in trade or business, and to persons who (though not so possessed or engaged) may be able from their influence or connections to promote the business or success to the company.

Directors.

17 4th. That there shall be twenty-one directors of the said company, and that the parties hereto of the first part shall be the first and present directors; but that the number of directors may be increased or diminished as hereinafter mentioned.

Chairman and deputy chairman.

5th. That there shall be a chairman of the company, and that the chairman of the directors for the time being shall

be such chairman, and that there shall be two deputy chairmen of the company; and that the deputy chairman of the directors shall be such deputy chairman for the time being.

6th. That there shall be a secretary of the company, and that Swinton Boult, of Liverpool aforesaid, insurance broker, shall be the present secretary.

General meetings.

7th. That a general meeting of the proprietors of the company shall be called in such place in Liverpool as the directors for the time being shall appoint, between eleven in the forenoon and three in the afternoon, on the first Monday in the month of February, in the year 1837; and on the first Monday in the month of February, in every succeeding year, or within ten days next following, and at such other times as they shall be duly convened in manner hereinafter expressed, and that every such meeting shall be styled a general meeting, annual or special, as the case may be.

Special general meetings may be called by directors.

8th. That the board of directors may at any time call an extraordinary general meeting for any special purpose in manner hereinafter expressed.

Notice.

9th. That the directors shall cause fourteen days' previous notice of every general meeting, whether annual or special, to be given by advertisement in some two or more of the newspapers printed and published in Liverpool.

Speccial meetings.

10th. That any five directors or any fifty proprietors holding in the aggregate one thousand shares or upwards, may at any time, by writing under their hands, require the board of directors to call an extraordinary general meeting for any purpose relating to the company, and that every such requisition to the board of directors for calling a special general meeting shall be left at the office of the company, and in every such requisition the object for
18 which the special general meeting is required to be called must be fully explained; or otherwise, it shall not be incumbent on the board of directors to take notice of the same; and that, if after any such requisition shall have been left at the office of the company, the board of directors shall, for the space of fourteen days after leaving the same, neglect or refuse to give notice of such meeting, and to fix a day for the same within one calendar month from the time such notice as aforesaid shall have been left, then it shall be lawful for the five directors, or the fifty proprietors, who shall have signed the requisition, to call for the purposes mentioned in such neglected or refused requisition, the special general meeting by advertising the same in any two of the newspapers printed and published in Liverpool, at least fourteen days before the time fixed for holding the same, and every such advertisement shall express the day, and hour, and place in Liverpool for holding such meeting, and also the delivery of the requisition to the directors, and their refusal to call such special meeting, and shall contain the names of the members signing such requisition, and shall also express the object of such meeting; and all acts of the members at such special general meeting shall be as valid as if the same had been done at any annual general meeting of the company.

Adjournment.

11th. That if, at any annual or special general meeting, twenty proprietors qualified to vote as herein mentioned, and holding in the aggregate at least 2,000 shares, shall not assemble and proceed to business within one hour from the time fixed for the meeting, no business shall be done at such meeting; but in such case the same general meeting shall stand postponed or adjourned to that day three weeks next following, at the same hour and place, and so from three weeks to three weeks, or as near as may be, as often as the same shall happen, until at some such general meeting there shall be present such number of proprietors holding such shares as aforesaid; and the meeting, notwithstanding some of the members shall depart after the chair shall be taken, shall be competent to transact business, and the directors shall cause notice to be given of every such adjourned or postponed general meeting, in like manner as is hereinbefore provided and directed in the 10th section of these presents.

Chairman of general meetings.

12th. That at every general meeting, whether annual or special, the chair shall be taken by the chairman of the company for the time being; and if he shall be absent or decline to take the chair, or there shall be no chairman, then by one of the deputy chairmen of the directors for the time being; and if such deputy chairmen shall be absent, or decline to take the chair, or if there shall be no deputy chairman, then the same shall be taken by one of the directors present, to be elected at the meeting, or in the absence of all the directors, by a proprietor qualified to be a director, to be elected at the meeting. And the chair shall be taken before any other business shall be transacted at that meeting.

Adjournment of general meetings.

13th. That both an annual and special general meeting may, in the cases hereinafter mentioned, adjourn to a future day, and that every special general meeting and every adjourned general meeting shall (except in the cases hereinafter mentioned) be held at a distance of not less than ten or more than fourteen days from the time when the same shall have been first advertised in any two papers printed and published in Liverpool; and that no business shall be transacted at a special general meeting besides the business for which it shall have been called; and no business shall be transacted at an adjourned general meeting besides the business left unfinished at the general meeting, from which such adjournment shall have taken place.

Mode of voting at general meetings.

14th. That at every general meeting, whether annual, special, or by adjournment, all motions, questions, and propositions shall be decided by a majority of the votes of the proprietors present at the meeting, and qualified to vote; and upon any difference of opinion at any such meeting, eight or more proprietors present qualified to vote, and holding in the aggregate not less than 800 shares, may demand a ballot, and such a ballot shall be granted; and, if the chairman shall think fit, shall be taken at such meeting; but otherwise, shall be taken at such place, on such day and at such hour of the day, as shall be then fixed by the chairman of the meeting; and every ballot shall be kept open for four hours, and no longer.

Voting.

15th. That every proprietor shall, in respect of the shares which he may hold in the said company, have the following votes and no more, namely: The proprietor of the entire quantity of five shares or upwards, one vote; of fifty shares or upwards, two votes; of 100 shares or upwards, three votes; of 200 shares or upwards, four votes; and of 400 shares or upwards, five votes and no more; and that every proprietor shall be entitled to vote either personally or by proxy, but not in respect of less than five shares, or in respect of any shares which he shall not have held for three calendar months previous to the meeting. And the chairman of every such meeting in addition to his vote as a proprietor, shall, in case of equality of votes, have a second or casting vote; and in case of a ballot for election of directors, if any proprietor shall deliver a list of persons qualified for directors who shall exceed the number of directors then to be elected, such list shall be rejected, and his right of voting be excluded; and no vote shall be received for the election after the time fixed at such meeting for closing the same; and one of the directors, if there be any present and willing to act, and if none such, then one of the proprietors present and qualified to vote, and who shall be chosen by the chairman of the meeting, shall, together with two other proprietors, to be chosen by the meeting as tellers, retire and investigate, and report to the meeting, or any adjournment thereof, the result of such ballot.

Members not to vote till calls paid.

16th. That no proprietor shall be allowed or entitled to vote at any meeting, or to exercise any other right as a proprietor of the company, until the full amount of all calls which have been made and be then due in respect of his shares shall have been paid.

Proceedings to be entered in a book.

17th. That the orders, resolutions, and proceedings of every general meeting of the company, whether annual or special, and also of the meetings of the directors and (as far as may be) of the committees appointed by the directors, as hereinafter mentioned, shall be entered in books to be kept for that purpose, and shall be signed by the chairman of each meeting, respectively; and such books shall, as between the proprietors of the company, be conclusive evidence of all such orders, resolutions, and proceedings, and that the person signing the same as chairman was duly elected as such.

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Directors to make a report annually.

18th. That at least seven days before every annual general meeting of the said company, the directors shall cause to be stated and entered in a book for that purpose, and to be laid in some public and conspicuous place in the company's office in Liverpool, open for the inspection of any proprietor, a true and accurate summary and report of the profits and accumulations or losses of the company from the time of the commencement of the business of the company, or the end of the period included in the last preceding report, and of the state and progress of the affairs of the company; and the directors shall announce the dividend or dividends which they may recommend in and for the past year. And every such report, when adopted by the meeting, shall be binding and conclusive on the proprietors, their

executors, administrators, and assigns, unless some error shall be discovered therein before the next subsequent report, and in that case such error only shall be rectified.

Annual meetings may appoint auditors.

19th. That at every annual general meeting of the proprietors, the proprietors shall and may (if it should be deemed expedient by a proportion of the proprietors then present, entitled collectively to at least three-fourths of the votes given at such meeting upon the question of the expediency of appointing auditors) appoint two proprietors (being respectively qualified to be, but not being, directors) as auditors, to examine and report on the state of the affairs of the company; and it shall be competent for such auditors, when appointed, to require the production of all books, writings, vouchers, and documents concerning the same, and to call in the aid of the manager, accountant, officers, clerks, and servants of the company, or any other person competent to give information in that behalf, and also to employ, at the expense of the company, such clerks and assistants as may be necessary to aid them in making an effectual audit and report; and the annual general meeting by which such auditors shall have been appointed, may be adjourned to some future day, and from day to day, to receive the report of the auditors on the matters committed to them; and the auditors shall make their report to such adjourned meeting, or if there shall be no adjournment, to the next general meeting of the company.

22

Powers of general meetings.

20th. That it shall be competent for any general meeting, whether annual or special, to decrease the capital or joint stock of the company by reducing and diminishing the amount of all the shares therein in an equal rate or proportion, or by reducing or limiting the number of the shares, or otherwise, in any other manner deemed eligible; and also to increase the capital of the company, and to raise such increased capital, by creating, an additional number of shares, or otherwise, in any other manner deemed eligible; and to cause such additional shares to be sold at such prices as the directors for the time being can obtain for the same, or to be allotted, apportioned, or appropriated to subscribers or purchasers, whether present or future proprietors or not, as the directors, in their discretion, shall determine, or to be disposed of or appropriated by both or either of those means; and such additional shares shall be subject to all the provisions of this deed of settlement, and shall entitle the holders from the time of becoming such to the same benefits, rights, and privileges in respect thereof as if the same had been originally subscribed for on the formation of this company. And that it shall be competent for any such general meeting, whether annual or special, to remove any director from office, to repeal all or any of the bye-laws and provisional regulations which shall have been made by the directors, or to adopt and confirm all or any of such bye-laws and provisional regulations, and which shall for that purpose be submitted to the general meeting then next following, to make any new laws, orders, regulations, or provisions, for better managing the company and the business affairs and concerns thereof, and to amend or to alter,

repeal, or make void, any of the existing laws, regulations, and provisions thereof; and to cause all or any of the
23 bye-laws and provisional regulations which shall be so adopted and confirmed, and all or any of such new laws, orders, regulations, and provisions, and all or any of such regulations for the repeal or avoidance of existing laws and provisions, to be embodied in any supplementary deed of settlement to be made from time to time for the government of the company; and the same, whether embodied in any such supplementary deed of settlement or not, shall be as binding and effectual to all intents as if the same were contained in these presents. And generally to determine upon any question or measure, matter or thing, relative to the affairs of the company which shall arise in the course of the conduct and management thereof, and which shall be brought before such meeting. Provided, nevertheless, that no act, order, or resolution be done or passed at any such meeting to release any of the proprietors from their respective liabilities to pay the full sum payable by them in respect of every share in the capital of the company, or from their covenants in that behalf, in this deed or any supplementary deed, as aforesaid, or to effect or infringe upon the rateable and proportionable division of the profits and liability to the losses of the company between the proprietors, or to affect or alter the provision hereinafter contained for the dissolution of the company in case of loss of capital. Provided, also, that no resolution which shall have for its object the decrease or increase of the capital of the company, or the abrogation, enlargement, or alteration of any of the clauses, powers, or provisions in this deed, or the making or executing any other deed of settlement, shall be valid unless the same resolution, after having been passed at a general meeting, either annual or special, shall be confirmed by a special general meeting to be convened by the board of directors expressly for that purpose, and to be held within one calendar month next after such first-mentioned meeting, and in which confirmation there shall concur at least two-thirds in number of the parties present and voting, if no ballot be demanded, or in case of a ballot, then two-thirds of the votes given at such ballot.

Remuneration of directors.

24 21st. That the proprietors present at any annual general meeting shall, from time to time, fix the remuneration (if any) to be made to the directors, or to any committees appointed from among the directors, for any special purpose.

Annual meetings to elect directors.

22d. That the present directors shall continue in office until the first annual general meeting in the year 1837, and every annual meeting shall elect directors to supply the place of directors who are then to go out of office, as hereinafter expressed.

Seven directors to retire from office yearly.

23d. That at the annual general meeting in February, 1837, and at every subsequent annual general meeting, seven directors shall retire from office, and such directors retiring from time to time shall be ascertained in manner following, to wit: At a meeting of the directors to be held for that special purpose, one calendar month at least before the an-

nual meeting in 1837, the then directors shall agree among themselves, or if they shall be unable so to agree, then they shall determine by ballot or by lot, the seven directors who at such ensuing meeting are to go out of office; and in the absence from such meeting of directors of any one or more of the directors, the chairman or one of the deputy chairmen shall ballot for him or them so absent. In like manner, previously to the annual meeting in 1838, the directors shall determine which seven of the directors who shall then have been longest in office are to retire; and if the directors do not so determine, a general meeting shall determine the order and succession of such retirement. At every succeeding annual general meeting, the seven directors who shall then have been for the longest period in office since their last election shall retire by rotation, and the names of the seven directors who from time to time shall retire shall be determined by the directors by reference to the book of proceedings of the company. The directors, as they shall from time to time retire, shall be re-eligible as directors immediately, or at any time afterwards. And if any general meeting, at which new directors ought to have been chosen as aforesaid, shall be adjourned, or if from any other cause new directors shall not be appointed, then, and in every such case, the directors in office for the time being shall continue to act as directors until new directors shall be chosen.

Chairman and deputy chairmen and votes of directors.

24th. That the said George Holt shall be the first and present chairman of the directors, and that the said Thomas Booth and Richard Edwards respectively shall be the first and present deputy chairmen of the directors; and that the future directors shall annually, at their first meeting after the annual election of directors, elect one of their body to be chairman, and two others to be deputy chairmen, who shall hold the said offices till the next election of directors; and the directors shall also, within fourteen days from the death or resignation of any chairman, elect another of their body in his stead; and the deputy chairmen, or one of them, shall officiate as chairman only on the death, or in the absence, or on the refusal to act, of the chairman; and in the absence or refusal to act of both, the board shall appoint any director present to be chairman of that meeting; and any person who shall take the chair at the commencement of business, at any meeting of directors, shall act during the whole of the meeting as chairman thereof; and all questions, matters, and things considered and proposed at meetings of directors shall be determined by a majority of votes, and each director present shall have one vote, and the chairman shall also have a second or casting vote.

Boards of directors.

25th. That the directors shall meet together at the office of the company, in Liverpool, on the first Tuesday in each calendar month, and at such other times as they shall for the despatch of business appoint among themselves, from time to time, and at such other times as they shall be duly convened, in manner hereinafter expressed, and that every such meeting shall be styled a board of direction.

Special boards. 26th. That the chairman or deputy chairmen, or any two directors, may at any time require the secretary to call an extraordinary board of direction, and the same shall be called by sending to each director a circular letter through the post office, or left at his usual place of business or abode as it appears in the books of the company, mentioning the place, day, and hour of such meeting.

Quorum of boards. 26 27th. That no business shall be transacted at any board of direction unless five directors shall be present at the commencement of the business, and when a decision takes place upon the whole or any part thereof. And that a board of direction may, by a resolution in which not less than fifteen members shall concur, from time to time limit, by their bye-laws, the powers to be exercised at boards consisting of fewer than ten directors.

Directors may resign. 28th. That in case any director shall, at any time, be desirous of resigning his office, and of such his desire shall give notice in writing to the chairman, the office of such director shall, at the next meeting of directors, be vacated.

Power to remove directors. 29th. That it shall be lawful for an extraordinary board of directors, specially called for that purpose, by a resolution in which not less than fifteen directors shall concur, to remove from office any director whose continuance shall appear prejudicial to the interests of the company.

Directors to supply occasional vacancies in their body. 30th. That whenever, by resignation or death, or otherwise, a vacancy shall happen in the office of director, except by going out of office in rotation, the continuing directors shall, as soon as conveniently may be, at a board specially called for that purpose, appoint such proprietor as they shall think fit (being qualified as herein required) to be a director for supplying such vacancy; and the director so appointed shall stand in the same rotation and place, in all respects, as the director in whose place he shall have been appointed.

Standing sub-committee. 31st. That the directors shall forthwith, and from time to time, appoint three, at least, of their own body to be and act as a sub-committee from time to time, for the more convenient superintendence and management of the ordinary affairs and business of the company, and shall regulate the duties and the order and course of retirement, and the attendance of the sub-committee; and any of the directors shall, at all times, have free access to all proceedings of the sub-committee; and the chairman of the directors shall be at liberty to attend and vote at the sub-committee whenever he thinks fit, but he shall not be liable or be called upon or obliged to serve on such sub-committee.

Chairman and votes of sub-committee. 27 32d. That the sub-committee shall, from time to time, elect one of their body to be their chairman. Questions shall be decided in the sub-committee by vote—each member thereof and the chairman of the directors, when he shall attend, having one vote, and the chairman of the sub committee having also a casting vote. The sub-committee shall take the management of all business delegated to them by the board of direction, and three members of the sub-committee, or two members thereof, and the chairman of the directors, shall constitute a quorum, and be competent to act.

Directors may appoint other committees.

33d. That it shall also be lawful for the board of direction to constitute one or more directors to be a special commitee or committees, to inquire, determine, and act in and about such matters and things as shall be specifically committed to him or them; and all and singular the powers hereby vested in the board of direction may be, by such board, reposed in or devolved upon or delegated to any committee to be appointed as aforesaid, except the power of making calls upon the proprietors for money, and of making bye-laws, which it is declared shall be exercised only by a board of direction in the manner hereinafter provided; and all acts and resolutions done and made by such committees, in fulfilment of the purposes of their appointment, and not otherwise, shall have the like force and effect as if done and made by a board of direction; and the appointment of such several committees shall be revocable at any time by any board of direction, wholly or in part, and either as to the persons constituting the same or the purposes of their appointment; and such committees shall, in all respects, be under the control and subject to the directions of the board of direction. And the meetings and proceedings of the same committees shall be governed by the provisions herein contained for the regulation of the meetings and proceedings of such board, so far as the same provisions may be applicable to committees constituted as aforesaid, and shall not be superseded by the express terms of their appointment.

Directors may commence business.

34th. That the directors may commence business as soon after the date of these presents as they think fit.

Directors may employ agents in other places.

28 35th. That it shall be lawful for the directors, from time to time, at their discretion to employ agents or clerks in any other ports or places in Great Britain and Ireland, to receive proposals for and effect insurances, and other the purposes of this association; and the directors may also, at their discretion, authorize and empower such agents or clerks, or any of them, to receive premiums and other moneys in respect of policies, on giving such security as the board of direction may approve of; but all such agents or clerks shall be under the absolute control and orders, and be removable at the absolute will of the directors, and shall act only under or by virtue of written instructions, to be signed by three, at least, of the directors from time to time, and to be regularly entered in a book, to be kept by the directors, at the office of the company in Liverpool, at all times open to the inspection of the directors.

Directors to provide a place of business in Liverpool.

36th. That the business of the company shall be carried on in Liverpool, where the head office of the company shall at all times be; and the directors shall, and they are hereby empowered to, provide such buildings or offices for that purpose there as they shall think fit; and for that purpose, with the funds of the company, to purchase in fee-simple or for any other estate, or take a lease at a rent or otherwise, of any buildings or premises, or to purchase or take a lease of any land and erect any buildings thereon for the purpose aforesaid; and the same lands, houses, buildings, and premises, or any part thereof, to sell again, exchange,

convey, assign, demise, let, or otherwise dispose of, on account of the company, at their discretion; with full powers to the directors acting under the provision hereinafter contained, to receive and give discharges for the purchase-money; and such lands, houses, buildings, and premises so purchased shall, for all the purposes of these presents, be deemed personal estate and part of the capital of the company, and shall be vested in trustees on behalf of the company.

Management vested in 21 directors.

37th. That subject and without predjudice to the powers of the general meetings, the directors shall have the entire management of the business, concerns, and affairs of the company, and shall have the exclusive possession and control, management and disposal of the capital stock, funds, estate, property, revenue, affairs, and concerns of the company, and shall regulate and determine the mode and terms of carrying on and transacting the business of the company, and all other matters relating to the affairs thereof. And it shall be competent for the directors at any time, by a resolution at a board to be specially convened for that purpose, in which not less than fifteen directors shall concur, to increase or diminish the number of the directors; but such resolution shall not be in force or be acted upon, unless the same shall be confirmed at the next annual meeting after the same shall be made; and if such resolution as aforesaid, for increasing the number of the directors, shall be made and confirmed as aforesaid, the increased number of directors shall be elected at such annual meeting in like manner as is hereinbefore provided, in respect to the directors to be elected in lieu of directors going out of office by rotation; and the directors so appointed or elected shall thenceforth be directors of the company, in like manner, and with the same powers, and be subject to the like regulations, as if they had been appointed directors by these presents.

Qualification of directors.

38th. That, except in the case hereinafter mentioned, no person shall be eligible as a director who shall not hold fifty shares, at least, or who shall not reside within the distance of twenty miles from the town hall of Liverpool, or who shall be a director, manager, clerk, or accountant in or agent for any other fire and life insurance company, or who shall be a female. And in case any director shall, whilst in office, cease to hold fifty shares, or to reside within the distance of twenty miles from the said town hall, or become a director, manager, clerk, or accountant in or agent for any other fire or life insurance company, as aforesaid, his office of director shall thereupon become vacated. And if, at any time, a sufficient number of persons, holding such number of shares as aforesaid, cannot be found eligible and willing to act as directors, then and in such case it shall be lawful either for a general annual meeting, or for the board of direction, as the case may require, to make up the deficiency from the other proprietors holding not less than ten shares, and qualified in other respects. And in case any person, hereafter to be elected a director, being disqualified at the time of his appointment, shall act

as a director, or, becoming disqualified after his appointment, shall continue so to act, every such person shall pay the sum of one hundred pounds into the funds of the company, which may be recovered for the benefit of the company, as liquidated damages, to form part of the surplus fund hereinafter mentioned; provided that no act of any board of directors shall be void by reason of any disqualified director acting therein, although there should not have been present a sufficient number of directors to constitute a board exclusive of such disqualified director.

Directors may remove secretary.

39th. That an extraordinary board of directors shall have power, when and as they think fit, to remove from his office the present or any future secretary of the company; and whenever, by removal, death, or otherwise, a vacancy shall happen in the office of secretary, an extraordinary board of directors, specially called for the purpose, shall elect a person to supply such vacancy.

Directors to testify acceptance of office.

40th. That every person who shall be appointed a director shall signify in writing his acceptance of office within seven days after notice in writing of such appointment, together with a copy of this clause, shall have been given or sent to him, unless such person shall be absent from Liverpool, in which case the directors shall allow such reasonable time for the reception of such notice as they may think proper; and in case any such director shall refuse or neglect to comply with this provision, his office shall be considered as vacated, and the remaining directors, including such of those appointed at such preceding meeting as shall have accepted office, shall appoint some other person duly qualified to supply the place of the director so making default, and the director so substituted shall stand in the same rotation and place, in all respects, as the person in whose place he shall be appointed. And the same course shall be adopted, from time to time, in each case of neglect to comply with this provision, until the number of directors accepting office shall be complete.

List of proprietors and retiring directors.

31 41st. That, for better regulating the election of directors, the directors for the time being shall, fourteen days before the day of election, cause to be made out and copied in a fair, legible hand, or printed, a list containing the Christian and surnames, and the residence of the proprietors of the company, who shall then be qualified to be elected directors, and also the names of the seven directors who are next to retire from office; and such list shall be fixed and remain in some conspicuous part of the office of the company in Liverpool, and be open to the inspection of each proprietor who shall apply to see the same, and each proprietor shall be at liberty to take extracts from, or copies of, such list; and a copy of such list shall also be fixed in some conspicuous place in the room where the meeting for the choice of directors shall be held; but, nevertheless, the election of any director or directors, when made, shall not be avoided or affected by any errors or omissions in such list, or by any other omission in the observance of this clause or provision.

Power to sign policies, bills, &c.

42d. That the sub-committee, or any three of them, or any three directors, or the secretary for the time being of the company, if and so long and in such cases and to such extent as the board of direction shall, by any resolution, to be entered in their book of proceedings, authorize such secretary in that behalf, and no other person shall have power to sign and execute policies of insurance, to adjust and pay losses, and to draw and endorse all bills of exchange, promissory notes, and other negotiable securities, and all checks or orders for the payment of money in the name or on account of this company; and no policy, agreement, bill, note, or negotiable security, signed, drawn, endorsed, or accepted in any other manner, shall be binding upon this company; and it shall be lawful and competent for the directors, from time to time, if they shall see fit, to authorize and empower the secretary, for the time being, or any other person, to agree or to accept on behalf of the company, and without consulting any of the directors thereon, any proposals for such insurance, as aforesaid, not exceeding on any one risk a sum to be named in the resolution confirming such authority; and each of the pro-
32 prietors hereby expressly renounces and disclaims all right and title to sign, draw, or endorse any policy, bill, note, or negotiable security in the name of the company, or to contract any engagement so as to charge or bind the same, unless he shall be expressly authorized so to do in pursuance of any of the provisions of these presents. And it is hereby expressly agreed that if any proprietor shall so do, contrary to this provision, he shall by such act incur an immediate forfeiture to the company of all his shares and interest in the company, and that without any resolution to that effect by the board of direction, and they shall have no power to remit any such forfeiture.

Directors may execute letters of attorney.

43d. That the board of direction shall have full power to make, sign, seal, and execute, or to authorize and empower and direct the secretary, for the time being, of this company to make, sign, seal, and execute any power or letter of attorney for enabling any person or persons, jointly or severally, to act on behalf of this company in any transaction, business, matter, or thing which shall be stated in such power or letter of attorney; and also, if need be, to authorize and empower such, their attorney or attorneys, to sign, seal, deliver, and execute, in due form of law, any deed or deeds which may be expedient or necessary on behalf of the company, and to empower such attorney or attorneys to delegate all or any such their powers in such manner as in such letter or letters of attorney shall be expressed; and the business, when done, transacted, or executed by any such attorney or attorneys, shall be of the like force or effect as the same would have been if done, transacted, or executed personally by the directors or other proper officers of the company.

Directors subscribing policies to be trustees for the company.

44th. That, unless the same shall be otherwise provided for by any act of Parliament or charter, the directors who shall from time to time sign or subscribe any policy or

policies of insurance, on behalf of this company, shall be, and are, the persons legally authorized and entitled to demand and receive the premiums and other moneys payable in respect thereof for the benefit and advantage of the company, and shall be, and are, authorized and empowered to sue for, take possession of, recover, and receive all
33 returns and premiums, and proceeds of goods, property, and all matters and things abandoned by the assured, and all moneys, demands, proceeds, profit, and benefit to arise or accrue from, of, or by means of, or respecting any such policy or policies; but they shall duly account for, and pay over for the benefit of the company, all moneys and other the premises which they may receive in respect thereof, immediately after the receipt of the same.

Directors, subscribing policies to lend their names in actions, and to be indemnified.

45th. That the directors shall be empowered, if they shall find it requisite or advisable, to use the name of any director or directors, or secretary, or other person or persons who may have subscribed such policy or policies, for all needful and lawful purposes, and as plaintiff or defendant in any action or actions, suit or suits, at law or in equity, or in any court of justice, and that whether any such subscribing person or persons may then be or remain a proprietor of the company or not; and every such subscribing person or persons shall be indemnified, defended, and saved harmless by the company and proprietors thereof, and out of the capital and funds of the company, from and against all damages, losses, costs, charges, and expenses, to be recovered and enforced against, or borne or paid by him by reason thereof, or arising out of any action or suit upon, or in respect of, any policy or policies which he or they may have subscribed.

Trustees and directors to lend their names in actions for calls and to be indemnified.

46th. That the directors shall be empowered to use the names or name of the present, or of any future, trustees or trustee of the covenants herein contained, or of any other covenants entered into in trust for the company, or of any directors or director, for all lawful purposes, as plaintiff or plaintiffs in any action at law or suit in equity against any member or members, for enforcing the payment of any calls or instalments, payable pursuant to the provision of these presents, and whether such director or directors shall be or remain a member or not; but each such trustee or director shall be indemnified and saved harmless by the said company and the members thereof, and out of the capital and funds of the company, from and against all damages, losses, costs, charges, and expenses, by reason thereof.

Officers whose names are used not to become nonsuit, &c.

34 47th. That no director, trustee, or officer of the company, whose name shall be used as a plaintiff or defendant in any action at law, or suit in equity, or in any court, pursuant to the provisions of these presents, shall wilfully become nonsuit, or discontinue such action or suit, or give any release or discharge, or molest, hinder, obstruct, or delay the same, or the directors for the time being, in prosecuting or proceeding in the same.

Power for directors to commence legal proceedings.

48th. That the directors shall have full power to commence, institute, and prosecute, and to defend in the name or names of the chairman of the company, or of any of the directors, or of such person or persons as shall be legal or req-

uisite, or otherwise, as they shall be advised, any actions or suits, and also any petition to found any fiat in bankruptcy, against any person or persons whatsoever, whether a member of this company or not, for recovering any debts, or enforcing any claims or demands, due to this company, or for any other matter relating to the concerns of this company; and also any indictments, informations, and prosecutions on behalf of this company for the stealing and embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to this company; or for any fraud, forgery, crime, or offence committed against, or with intent to injure or defraud this company; and to discontinue, abandon, release, or become nonsuit in any such action, suit, or proceeding, as the directors shall think fit; and the sum or sums of money to be recovered in any such suit or proceeding shall be brought into and deemed part of the capital of this company.

Power to arbitrate and compound for debts.

49th. That it shall be lawful for the directors, at discretion, to enter into any bond or agreement for the reference or submission to arbitration of any matter in dispute, question, or controversy between the company, and any person or persons whomsoever, including any individual proprietor of the company, and to submit to and abide by such reference and every award to be made in pursuance thereof; and to compound for any debts or demands owing to the company; and to accede to, sign, and execute any deed of composition, or conveyance, or assignment of his estate and effects, made by any debtor of the company, whether a member or not, for the benefit of his creditors; and to give time to any debtor for the payment of his debt, either upon security or without; and to abandon any debt which may seem to the directors bad or desperate; and for and on behalf of the company to execute any such bond or agreement of reference, or deed of composition, conveyance, or assignment, as before mentioned; and also the certificate, release, or other discharge of any bankrupt, insolvent, or other person indebted to the company; and also to authorize the chairman, or deputy chairman, respectively, or one director, or the secretary, or any other person, to prove any debt due to the company from any bankrupt or insolvent, whether shareholder or not, and to receive the dividends, and act in all matters arising out of or under any such bankruptcy or insolvency; and to direct and empower any such person to become and act as assignee under any commission of bankruptcy, or of any insolvent debtor's estate.

Power to make bye-laws.

50th. That in all cases not provided for by this deed, it shall be lawful for the directors to act in such manner as may appear to them to be best calculated to promote the interests and welfare of the company; and for the better guidance of the directors for the time being in their management and superintendence of the property and concerns of the company, it shall be lawful for them to make, from time to time, whatsoever rules, bye-laws, or provisional regulations they shall think expedient, so as the same be not inconsistent with, or repugnant to, any of the express provi-

sions in this deed, or to the fundamental principles or constitution of the company thereby established; and from time to time to alter or repeal all or any of the rules, bye-laws, or provisional regulations so to be made, and which shall not have been established by or incorporated into any supplementary deed of settlement of the company, so, nevertheless, as fifteen directors at least shall concur in any such alteration or variation.

Directors to appoint officers, &c.

51st. That a banking account shall be opened in the names of the directors, at such bank or banks as they shall
36 fix upon; and the appointment, employment, and removal, from time to time, of such bankers, brokers, secretaries, agents, accountants, clerks, law-officers, and other officers, servants, and persons as the directors may consider requisite for the management and carrying on of the business and affairs of the company, shall be absolutely and solely vested in the directors; and it shall be lawful for the directors to allow and pay to such persons such commissions, charges, salaries, wages, or other remunerations, and to give such gratuities for extraordinary services as the directors shall think reasonable and agree on; and to require such security and guarantee for the due and faithful discharge and performance, by the same persons respectively, of the duties of their respective offices and situations as the directors shall think fit. And that the Bank of Liverpool shall be and are hereby appointed the first and present bankers of the company.

Directors to appoint trustees.

52d. That the board of directors for the time being shall, from time to time, when and as often as occasion shall require and they shall think fit, nominate and appoint any three or more of the directors for the time being, or of other the proprietors of this company, or three or more persons not being proprietors in this company, to be trustees for the company, to or with, or in the names of whom, or some of whom, may be made and taken all grants, conveyances, and assurances of property in favor of the company, and all instruments and assurances for the security and indemnity of the company, or of the directors, officers, property, capital, stock, and effects thereof. And that the said Sir Tho's Brancker, W'm Brown, and Adam Hodgson (who are not proprietors in this company) shall be the first and present trustees thereof, for the purposes aforesaid, and also for accepting the covenants of proprietors of the company who may execute or otherwise accede to these presents.

Power to appoint new trustees.

53d. That, within two calendar months next after any of the trustees for the time being of the company shall depart this life, or be desirous of being discharged from the trusts reposed in them, or shall go to reside beyond the seas, or
37 shall neglect, or refuse, or become incapable to act in the said trusts, before the same trusts shall be fully discharged, the board of direction shall nominate and appoint any other director or directors, or other person or persons as aforesaid, to supply the place of the trustee or trustees so dying, desiring to be discharged, going to reside beyond seas, or refusing, or neglecting, or becoming incapable to act as aforesaid; and immediately after such nomination and appointment, the trust moneys, securities, and

property of the company shall be conveyed, assigned, and transferred so and in such manner as that the same may vest in such new trustee or trustees jointly with the surviving or continuing trustee or trustees, or in such new trustees only, as the case may require, and upon the same trusts as the same were held by the former trustees.

Trustees to be under control of directors.

54th. That all securities, investments, and purchases which, in pursuance of these presents, shall be taken or made by or in the names of any persons in trust for the company, and all moneys thereby secured, or therein vested or accruing therefrom, shall be under the control and subject to the disposition of the directors; and every order made by the board of direction touching the disposition of and dealing with the same securities and investments shall be obligatory on the trustees of the company, and be a complete and conclusive justification and indemnity to them in acting in obedience to the same order. And all such trustees shall, when required by the board of direction, sign, seal, and execute, and shall be bound to execute, such declaration of trust of the property, rights, and effects vested in them, in behalf of the company, as the board of direction shall require.

The business of the company to be done by the directors exclusively.

55th. That all insurances granted by the company shall be effected, and all other business of the company shall be done, upon such terms and conditions, in such places, at such times, and in such manner, as the board of direction shall think proper from time to time, and that it shall be entirely in the discretion of the board of direction to accept or refuse proposals for insurances, purchases, or sales, or other the business of the company.

Directors not to vote when interested.

56th. That no director shall be allowed to vote upon any proposition, matter, or thing affecting himself or any person connected with him as a partner or relative; but such director may, nevertheless, be present at, and join in, the discussion thereof.

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Board of direction to settle losses.

57th. That it shall be lawful for the board of direction to settle all losses upon insurances as soon as the adjustment thereof shall take place, or according to any regulation they may think fit to establish for that purpose from time to time.

Books to be kept.

58th. That the directors shall cause all necessary and proper books of account to be provided and kept at the office of the company in Liverpool and elsewhere, and that they shall cause to be written and made in the said books fair, explicit, and true entries of all risks, money lent, receipts, payments, transactions, and dealings by and on behalf of the company, and of all profits, gains, and losses arising therefrom; and also an account of all dealings and investments which shall be made with or of the capital of the company; and the directors shall be at liberty to keep separate accounts of the life department.

Moneys and securities to be lodged in the bank.

59th. That the board of direction shall cause all the moneys received or to be received on account of the capital of the company, and all the moneys to be received from time to time for insurances, and all other moneys, bonds, bills, notes, and other securities of or belonging to the said company, as and when the same shall be received, to be paid

and delivered into or deposited in the banking-house or banking-houses of the bankers whom they shall think proper to employ, as aforesaid, to an account entitled, "The Directors of the Liverpool Fire and Life Insurance Company," and the same or any part thereof shall not be withdrawn therefrom but for the purposes of the company, and by a check or cheques in writing, signed by three or more of the directors, or by the secretary of this company, if thereunto authorized, as aforesaid.

Investment of funds.

60th. That the board of direction are hereby authorized to cause all the funds and property for the time being in the hands of the bankers, (except such sum as they shall think fit to leave in their hands to answer the current payments and expenses,) to be laid out and invested in the names of the trustees of the said company, or any three of them,
39 in the parliamentary stocks or funds of Great Britain, or in the stock of the Bank of England, or in navy or exchequer bills, or India bonds, or on real or leasehold securities in Great Britain or Ireland, or in the purchase of annuities for one or more life or lives, or, with the concurrence of a majority of at least eleven of the directors for the time being, on the security of any bonds of the corporation of Liverpool or of the trustees of the Liverpool docks, or in shares of or in any joint-stock banking company, or in shares of, or in, or upon the mortgages or securities of the Liverpool and Manchester Railway Company, or the Grand Junction Railway Company, or the London and Birmingham Railway Company, or of any other railway company, to be actually formed and constructed under an act of Parliament or charter of incorporation, and actually in operation and in receipt of an adequte income at the time, or on the security of any other docks, canals, railways, river navigations, waterworks, turnpike roads, bridges, or parochial or county rates, or other security whatsoever, not being mere personal security; and from time to time, as they shall think proper, cause any of the funds or property to be laid out and invested as aforesaid to be varied by investment in any other stocks, securities, or property hereinbefore mentioned, or to be sold and converted into money, and the money produced thereby paid to any of the bankers for the time being, to be employed or laid out and invested in any of the modes before specified; and the trustees are hereby required to apply all the funds and property in their names, from time to time, as the said board of directors shall appoint.

Cash balance.

61st. That the board of directors shall always leave in the hands of the bankers such a balance out of the funds and property of the company as shall be sufficient to answer the current expenses of the company; and if, at any time, such balance shall not be sufficient for that purpose, it shall be lawful for the board of direction to call in and convert into money a competent part of the funds or property of the company hereinbefore directed to be invested.

Books to be balanced half-yearly.

62nd. That the board of direction shall, twice in every year during the continuance of the company, up to
40 and upon, or so soon as may be after, the 24th day of June and 25th day of December in each year, cause

the books to be settled, adjusted, and balanced up to and including the quarter terminating on those days respectively, and shall cause to be made out a full, true, and explicit statement and balance-sheet, exhibiting the amount of the outstanding risks, debts, and credits of the company, and the amount and nature of the capital and property thereof, and the then fair value of the same; and the value of or the probable amount of losses, estimated by the directors as near as may be and to the best of their judgment; and the profits and losses of the company, and all other matters and things requisite for fully, truly, and explicitly manifesting the state of the affairs of the company. But no proprietor, not being a director or an auditor, specially appointed under the 19th section of these presents, shall be entitled to inspect or to have in equity a discovery of the books, accounts, documents, or writings of the company, except such as may be produced for that purpose at any meeting of the proprietors, and except these presents and any general supplementary deed to be prepared in pursuance thereof.

Reserved surplus fund.

63rd. That, unless the directors shall at their discretion determine the contrary, no dividend of profits shall be made for the period ending on the 25th day of December, 1837; but the same profits shall be retained, and shall be applied to the forming of a fund to be called "The Reserved Surplus Fund." And, in every succeeding year, the net profits which shall accrue shall, after setting apart such proportion thereof as the directors shall think requisite, (for forming, increasing, or maintaining a reserved surplus fund,) be divided amongst the subscribers in proportion to their respective shares. The reserved surplus fund for the time being shall, and is hereby declared to be, a reserved fund of capital, to meet any unforeseen emergencies, losses, or extraordinary demands upon the company, as well as a reserved fund of profits for the purpose of supplying, from time to time, any deficiency which, from unforeseen circumstances, may arise in the profits of any year, and of preventing, as far as may be, a fluctuation in the amount of dividends of successive years; and the same shall and may be applied for the several purposes aforesaid by the directors.

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Investment and interest of reserved surplus fund.

64th. that the board of direction shall be authorized to cause the moneys and profits to be applied in constituting and forming the said reserved surplus fund, to be invested in like manner and with the like powers of varying securities as hereinbefore directed, in respect to the paid-up capital of the company, and shall accumulate the interest and income thereof; and when and as soon as the said reserved surplus fund, with the accumulation, thereof, shall amount to £100,000, and so long as the same shall continue of that amount, no further additions by the means aforesaid shall be made thereto, but the whole profits of the company, and also the interest and profits from time to time to accrue upon such surplus fund, shall, in the discretion of the directors, be considered as available for the purpose of division amongst the proprietors as part of the annual profits, and that the interest and income arising from all other moneys, funds,

and securities belonging to or held in trust for the company shall be considered as profits in the year in which the same shall be received, and be disposed of accordingly. But, until the said reserved fund shall amount to £100,000, or, if reduced, shall again be increased to £100,000, no greater dividend than £5 per cent. on the paid-up capital shall be paid to the proprietors.

Separate account of reserved surplus fund.

65th. That the directors shall cause separate accounts to be kept of the said surplus fund, and the interest and income and accumulations thereof, and of the other moneys, funds, and securities belonging to the company.

Dividends.

66th. That the directors, subject to the approbation of a general meeting of the company, shall, from time to time, determine upon, appoint, and declare such dividends out of the clear profits of the company, and payable at such times as they, in their judgment, shall think fit and proper, but subject to the provisions hereinbefore contained, while the said reserved fund shall be under £100,000; and when a dividend shall be declared, the directors shall cause the same to be paid to the propietors in proportion to their admitted shares, at such time and in such manner as
42 the directors shall think fit. But no proprietor shall receive any dividend in respect of any shares prohibited from being held, as aforesaid, or in respect of his shares, until all calls made previously to the time appointed for the payment of such dividend, in respect of the same shares, shall have been paid, although such call or calls shall have been made after such dividend shall have been declared, and before the same shall be actually paid to such last-mentioned proprietor.

Notice of dividends.

67th. That the directors shall, immediately after any dividend shall have been declared, give notice to the proprietors of the time and place appointed for payment thereof, by advertisement in some two or more newspapers published in Liverpool.

The interest of proprietors.

68th. That all the property of the company, as between the proprietors, shall always be considered personal estate; and every proprietor shall be interested in the profits, and liable to the losses, of the company, in proportion to his shares; and there shall be no benefit of survivorship amongst the proprietors, but every proprietor shall have a distinct and separate right to his shares; and the same shall, subject to the regulations of these presents, be subject to his disposition by deed or will, or in case of intestacy, be transmissible to his personal representatives.

Only one of several joint owners to act.

69th. That whenever any shares shall be vested in two or more persons, jointly or in common, or otherwise, the person whose name shall stand first in the books of the company as one of the proprietors of such shares shall, from time to time, for the purposes of this deed, be considered the sole and absolute proprietor thereof, without proof of the concurrence or against the express desire of any other proprietor of such shares.

Company not to be affected by trusts.

70th. That the person in whose name any shares shall stand shall, to all intents and purposes within the meaning of these presents, be deemed at law and in equity the abso-

lute sole and beneficial proprietor of such shares, and shall be the only person known to, or recognized by, the company in all votes, transfers, notices, payments, receipts, and other matters relating to the same shares. And the company shall in no case be bound to notice, or be affected with express notice of, any trust or equitable charge or lien
43 imposed on any shares, or with any gift thereof, by way of legacy, until the legatee shall have become a proprietor, as hereinafter mentioned.

Company to have a lien on shares for debts due from proprietors.

71st. That all debts, liabilities, and engagements due to, and subsisting with, the company, by or on the part of any and every proprietor, on any account whatsoever, shall in all cases be the primary and paramount lien on the shares of every such proprietor, whether the said debts, liabilities, or engagements be those of such proprietors solely or jointly or in partnership with any other person; and the directors are hereby empowered to cancel and extinguish and declare forfeited, or to sell and dispose of, the shares of such proprietor, either wholly or in part, at their discretion, for or towards the satisfaction of such debts, liabilities, or engagements. Provided always, that such lien as aforesaid, in respect of the debts, liabilities, or engagements of the proprietor transferring any such shares, shall be wholly discharged in respect of the same shares, upon and after the transfer thereof, with the approbation in that behalf prescribed in the 80th section of these presents.

Certificates of shares.

72nd. That the number of shares subscribed for or holden by each person shall, at the time of his executing this deed, be written opposite to his name, as subscribed to these presents; and a certificate shall be delivered to him in a form prescribed by the directors, specifying the number of shares held by him.

Shares to be registered.

73rd. That the names and places of abode, and additions of all the proprietors, with the number of shares held by each, shall, from time to time, be entered in a book, to be called "The Register of Proprietors;" and every proprietor who shall at any time change his name or place of abode, or, being a female, shall marry, and the assignees of every proprietor who shall become bankrupt or insolvent, and the personal representatives or legatees of any proprietor who shall die, shall, immediately after any of the said events, leave a notice at the office of the company in Liverpool, stating his, her, or their name or names, or new name or names, and place or places of abode; and when a female proprietor shall have been married, then the name and place of abode of her husband. It shall be incumbent on the proprietors respectively, in all cases, to leave a notice in
44 writing of their names and places of abode, and of such other particulars as last aforesaid, at the said office, and to see the same registered in the said register; and if any proprietor or other such person as aforesaid shall neglect so to do, the directors or other officers of this company shall not be chargeable with the miscarriage of any notice to such proprietor, or any other consequences thereof.

Payment of instalments amount-

74th. That every original proprietor of shares in this company shall (in addition to the deposit of £1 per share al-

ready paid) pay to the directors forthwith a second instalment of £1 10s. per share, making the sum actually paid up £2 10s. on every share held by him; and, if the directors shall require, the same shall also pay interest at the rate of £5 per centum per annum on the said instalments unpaid, from the respective times of their becoming due; and the directors shall have power to sue for the said instalments and interest, in the names of the trustees, for the time being, of the covenant herein contained, or in the name of any person to be authorized by any charter or act of Parliament, or otherwise, as they may be advised or think fit. ing to £2 10s. per share.

75th. That, in addition to the payments, amounting to £2 10s. per share, by each proprietor as aforesaid, the board of direction shall have full power to require or call for the further payment by each proprietor of the sum of £17 10s. on every share held by him, by such instalments and at such times as they shall think fit; provided that notice of every such call, expressing the time and place when and where the payment is required to be made, and stating the substance of the provision next hereinafter contained, relating to the forfeiture of shares by the non-payment of calls, be given to every proprietor in the mode hereinafter prescribed, two calendar months at least before the time appointed for payment of the same; and the directors shall have full power, in the names of such persons and in such manner as they may think fit, to sue for and recover the amount of every such call and interest thereon, from every person neglecting to pay the same, and also, if they shall think fit, to enforce the forfeiture of the shares held by such person, in pursuance of the provision next hereinafter contained, or to adopt either of such proceedings, at their discretion Power to make further calls, not exceeding £17 10s. per share.

45 76th. That on the refusal or neglect of any proprietor, or of the executors, administrators, legatees, or next of kin of a deceased proprietor, or the assignees of any bankrupt or insolvent proprietor, or the committees of any lunatic proprietor, to pay any call or instalment made or called for in pursuance of these presents, with interest thereon, (if required,) within two calendar months next after the day appointed by the directors for the payment of the same call, it shall be lawful for the directors to declare that the shares of the proprietor or proprietors who, or whose executors, administrators, legatees or next of kin, assignees or committees, shall so refuse or neglect as aforesaid, and all benefit and advantage whatsoever of or incident to the same, shall henceforth be forfeited to the remaining proprietors of the company, and the same shall be forfeited accordingly, subject, nevertheless, to the provision hereinafter contained for sale of forfeited shares. Forfeiture of shares on non-payment of calls.

77th. That if at any time the directors shall find that they cannot employ to advantage the whole of the capital paid up, they shall have power to return any part thereof to the proprietors, in proportion to the shares held by them respectively. And on giving such notice, as hereinbefore required, for payment of an original instalment, they shall have power to recall the whole or any part of the capital so Directors may return capital.

returned, in such manner as before described with respect to original calls.

Directors may remit forfeiture of shares.

78th. That in all cases in which any shares shall become liable to be or be actually forfeited, (except the case mentioned in the 42nd section of these presents,) it shall be lawful for, but in no case obligatory or imperative on, the directors, by the imposition of a fine, or upon satisfaction and compensation made by the owner, to remit such forfeiture, and to restore the owner of such share to his rights and qualifications in respect of the same shares, as if such forfeiture or liability to forfeiture had not been incurred; provided that no remission of such forfeiture shall be made after such forfeited shares shall have been sold or disposed of, in manner expressed in the provision next hereinafter contained, nor after twelve calendar months from the declaration of forfeiture, nor so as to prejudice or disturb any dividend which may have been declared.

Directors may purchase shares for the company, and sell purchased or forfeited shares.

46 79th. That the board of directors are hereby authorized to purchase any shares in this company, for the benefit of this company; and whenever, by means of any purchase made or forfeiture accrued, the directors shall be or become entitled to any shares on behalf of the company, the directors may either retain such shares on behalf of the company, or, at their discretion, and at any time or times, and either by public auction or private contract, or otherwise, as to the said board of directors shall seem most expedient, and without the concurrence of the former holder or owner thereof, or his representatives, sell and dispose of the same shares, or otherwise deal therewith as to them shall seem most expedient, and for the benefit of the company; and the proceeds arising from every such sale or disposition shall be added to the capital of the company.

Shares may be sold with the approbation of directors.

80th. That it shall be lawful for the proprietors or their legal representatives, whether by marriage or as executors, administrators, legatees, assignees under bankruptcy, or as committees of any lunatic proprietor or otherwise, to sell and transfer all or any of their shares, subject, nevertheless, to the approbation of a board of directors, or the standing subcommittee of the directors, such approbation to be testified by the execution of the deed of transfer of such shares, by the secretary, or, in case of his absence, by such one of the directors as shall be in that behalf appointed by the board of directors; and for the purpose of obtaining such approbation, the holders of any shares proposed to be transferred shall give notice in writing to the directors, to be left at the company's office in Liverpool, of such intended transfer; and which notice shall contain the respective names and address of the proposed transferee, and of the then present holder of such shares.

No sales to be made until calls paid.

81st. That no person shall sell or transfer any shares after the time appointed for payment of any instalment called for by the directors, until the amount of such instalment in respect of the same shall have been paid.

Form of transfers.

82nd. That the board of directors shall determine the form of the transfer of shares, and shall, from time to time, make such orders and regulations respecting such transfers, and by whom and in what manner the same shall be pre-

47 pared, and with what officers of the company, and in what place the same shall be deposited, and how the same shall be registered, as shall appear to them expedient for the security of the company, and for effectuating the purposes of such transfer. And all sales and transfers of any shares not made conformably to the regulations of the directors, shall be invalid at law and in equity; and every purchaser or transferee of shares shall, in respect thereof, if required by the directors, either expressly or by a general regulation in that behalf, execute these presents, or some deed of accession to be prepared by the directors for the purpose, whereby he shall enter into covenants with trustees for the company duly to observe and abide by all the stipulations, provisions, and regulations of these presents, or for the time being, affecting holders of shares.

New certificates on transfers.

83rd. That upon every sale or transfer of shares, whether by the directors or otherwise, the certificate or certificates held by the former proprietor of such shares shall be cancelled, and a new certificate shall be issued to the new proprietor in respect to the shares transferred to him, and if any of the shares included in the certificate or certificates so given up shall be retained by the old proprietor, a new certificate in respect thereof shall be issued to him; and new certificates may, by order of the board of directors, be, from time to time, issued in the place of such as shall be worn out, lost, damaged, or destroyed; and the production of any certificate shall at all times be good prima-facie evidence of the title of the proprietor, to whom the same shall be issued, to the shares included therein.

Representatives to prove their title.

84th. That before any assignee of a bankrupt or insolvent proprietor, or the committees of any lunatic proprietor, shall sell or transfer any shares vested in him, or to which he shall be entitled in that capacity, and before any executor, administrator, or legatee of a deceased proprietor, or any husband of a female proprietor, shall sell or transfer any shares vested in him in any such capacity, or shall become a proprietor in respect of such shares, or receive any dividends in respect of the same, he shall leave for inspection, at the office of the company, the deed or instrument
48 of assignment, probate of the will or letters of administration under which, or the certificate of his marriage, with the person in whose right he shall claim to be entitled to the same shares.

Husbands, executors, administrators, and legatees may become proprietors, or sell.

85th. That the husband of any female proprietor, or the executors, administrators, or legatee of any deceased proprietor, or the assignee of any bankrupt or insolvent proprietor, shall not as such be a proprietor; but any such husband, executor, administrator, or legatee may sell and transfer such shares in manner hereinbefore expressed, or at his option become a proprietor in respect of such shares, first giving notice in writing at the office of the company, in Liverpool, of such his desire, in which notice shall be expressed the name and place of abode and proper addition of the person giving the same, and the name of the proprietor in whose place or right he claims, and the number of shares in respect whereof he is desirous of becoming a proprietor,

whereupon and upon otherwise complying with the provisions of these presents, he shall be admitted a proprietor in respect of such shares, and have the same transferred into his name, and shall be personally charged with the duties and liabilities incident to the ownership of the same.

Assignees must sell.

86th. But every such husband, executor, administrator, or legatee who shall not, under the provisions herein contained, elect to become a proprietor, and every assignee of a bankrupt or insolvent proprietor, and committee of any lunatic proprietor, shall sell and transfer the shares vested in him in such capacity; and upon the transfer or assignment of the shares of any bankrupt or insolvent, or lunatic proprietor, and not before, the assignees or committees of such bankrupt or insolvent, or lunatic proprietor, shall be entitled to receive the arrears of dividends, interest, and profits which such bankrupt or insolvent or lunatic proprietor would have been entitled to in respect of such shares; and every such representative shall be entitled to receive the dividends which shall have become due on such shares before his title to the same accrued; but no dividends which shall become due on the same since his title shall have accrued shall be receivable or demandable by him, but shall, till some person shall have become a proprietor in respect of the same shares, remain in suspense; and every transfer shall carry with it the profits and interest and share of capital and reserved surplus fund, in respect of the shares transferred, so as to close all the right and interest of the parties making such transfer in respect of such shares.

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Purchasers and representatives to be proprietors, upon acceding to this deed.

87th. That every purchaser of shares who shall not previously have executed or otherwise acceded to these presents, and every husband of any female proprietor, and every executor, administrator, or legatee of any deceased proprietor, who shall signify to the directors his desire to become a proprietor in respect to the shares vested in him in such capacity, and shall not then be a recognized proprietor in respect of any other shares, shall, as to all duties, obligations, claims, and demands upon or against him in respect of such shares, be considered a proprietor from the time of the same shares being so purchased by or so vested in him, as aforesaid; but as to all profits, rights, privileges, benefits, and advantages to arise from the same shares, no such person shall be considered a proprietor in respect of the same until he shall have executed or otherwise acceded to these presents.

Proprietors need not execute more than once.

88th. That every person in whom any shares shall vest, and who, previously to such vesting, shall have executed or otherwise acceded to these presents, shall, as to all the shares, so vested in him as aforesaid, be considered as a proprietor from the time for lodging his title to such shares in the office of the company in Liverpool, and shall not be required again to execute this deed or other deed of accession as aforesaid.

Shares may be forfeited if proprietors do not accede.

89th. That in case any person in whom any shares shall, by original subscription or otherwise, become vested, and who shall not have executed or otherwise acceded to these

presents, shall, for one calendar month after notice in writing for that purpose, neglect or refuse to execute these presents, or such deed of accession as aforesaid, then it shall be lawful for the directors to declare the shares so vested in such person so neglecting or refusing as aforesaid, and all benefit and advantage whatsoever incident thereto, to be forfeited to the remaining proprietors of the company,
50 and the same shall be forfeited accordingly, subject to the provision herein contained for sale of forfeited shares.

Obligations of proprietors to cease on forfeiture or transfer of shares.

90th. That whenever any shares shall become forfeited, or shall be duly transferred to a new proprietor, then, and not before, the responsibility of the previous proprietor in respect of such shares shall cease, and he shall be released from all subsequent claims, demands, and obligations, and from all future observance and performance of the covenants, conditions, stipulations, and agreements of these presents in respect of the same shares.

Receipts of officers to be discharges.

91st. That every receipt of any one or more of the trustees for the time being of the company, given for any moneys or effects of the company being the object of their respective trusteeships, and every receipt of any two directors for any of the moneys or effects of the company, paid or delivered to or according to the direction of the same directors, and every receipt of the secretary for the time being, or of the cashier, or any agent, attorney, clerk, officer, or servant of the company, duly authorized by the directors in that behalf, shall be a good and sufficient discharge for the money or effects which in or by such receipt shall be expressed to have been received; and the persons paying and delivering the same, and taking such receipt, shall not afterwards be obliged to see to the application of the same money or effects, or be answerable or accountable for the misapplication or non-application thereof.

Officers to be indemnified.

92nd. That all the directors, trustees, managers, and officers for the time being of the company, and all proprietors and others who may have been proprietors, against whmo any execution shall be sued out in any action or proceeding against the company, shall at all times be indemnified by the company against, and it shall be the duty of the directors, out of the assets of the company under their control, to pay all costs, charges, damages, and expenses which they or any of them may incur, sustain, or be put unto in or about the execution and discharge of their respective trusts and offices, or in or about any action, suit, or proceeding, either at law or in equity, or otherwise, in which
51 they or any of them shall or may, whilst acting in pursuance of these presents, be concerned, unless the same shall be sustained or incurred by reason of the willful neglect or default of the parties sustaining or incurring the same respectively, or unless such parties shall have refused or declined to submit the management or prosecution and defence of any such action, suit, or proceeding to the directors. And the amount of such costs, charges, losses, damages, and expenses, for which an indemnity is intended to be hereby provided, shall, immediately after the same

shall be sustained or incurred, and although the same shall not be then ascertained, attach as a lien upon the property of the company, and as between the parties of these presents, or any supplementary deed of settlement, have priority over all other claims; and, in the first place, such lien shall be satisfied, so far as may be, out of the reserved surplus fund. And none of the directors, trustees, or officers shall be answerable for any other or others of them, nor for the acts, deeds, or defaults of any other or others of them, but each of them for his own acts, deeds, and defaults respectively; nor for any person or persons with whom any moneys or effects shall be deposited for safe custody or otherwise, nor for the insufficiency or deficiency in value or title of any security upon which the moneys of the company may be invested, nor for any loss, damage, or misfortune which may happen to the property of the company, unless the same shall happen by reason of the willful neglect or default respectively of such director, trustee, or officer. And the directors shall, out of the funds of the company, pay and discharge all just liabilities and demands incurred or contracted in forming and establishing the company, and in preparing and obtaining the execution of these presents or otherwise in relation thereto, and at all times pay and reimburse themselves all costs, charges, and expenses they may incur in the capacity of directors.

93rd. That in all cases of dispute or difference between or amongst proprietors, or any of them, regarding the construction or meaning of any clause, matter, or thing in this present deed, or any other deed, or in any bye-laws or regulations of the said company respectively contained,
52 or regarding any other matter, transaction, or thing in which the company shall have been or shall or may be concerned or interested, the decision of the board of directors on the matter in difference shall and may be forthwith given thereon at any meeting of the board; and such decision of, and when confirmed by a general meeting, which may be called by the directors for the purpose, shall be final and conclusive on all the proprietors in respect of the matter in difference; and it shall not be competent for any proprietor to take any steps, either at law or in equity, to prevent such decision from being given, or to set aside such decision or the effect thereof.

Reference of disputes to arbitration.

94th. That in case any dispute or difference shall at any time or times arise or be moved, between the proprietors, or between any one or more of the proprietors and the husband of any female proprietor, or the executors or administrators of any deceased proprietor, or the committees or assignees of any lunatic, bankrupt, or insolvent proprietor, concerning the construction or effect of any clause or provision contained in these presents, or any supplementary deed, or any charter or act of Parliament, or in any wise relating to or concerning the management, conduct, and concerns of the company in any event for which express provision is not hereby made, or concerning any other matter or thing affecting only this company and any one or more proprietor or proprietors, and which shall not have been decided or

concluded under the last clause, then, and in every such case, the same shall, within two calendar months next after the same shall arise, or so soon thereafter as conveniently can be, be submitted or referred to arbitration, in manner hereinafter expressed, to wit: Each of the parties (whether each party shall consist of one or more persons) between whom such difference shall exist shall name one arbitrator, and the arbitrators so named shall, within fourteen days next nominate one other arbitrator, and shall then, jointly with each other nominee, forthwith enter into the matters so referred; and in case either of the parties in difference shall not name an arbitrator within ten days after a requirement in writing from the other party so to do, then
53 the other party may name an arbitrator, and the arbitrator so appointed may name a second, and the two first-named may name a third; and the award and determination of the major part in number of the arbitrators so appointed shall be final and conclusive in the matters referred to them, so as the award be in writing, under the hands of the arbitrators making the same, and left at the office of the company in Liverpool, or ready to be delivered to the parties within forty days after the appointment of the arbitrators, or within any further period to which they, or the major part of them, shall, previously to the expiration of the forty days, by writing under their hands, have enlarged the time of making their award, and which enlargement they, or the major part of them, are hereby expressly empowered to make from time to time, at their discretion; and that, although all or any of the parties in difference shall have departed this life previously to the making of such award, and such arbitrators shall, by their award, direct and order by whom, to whom, and in what proportion and manner the costs and expenses of and attending such reference and award shall be paid, and no suit or action shall be commenced or brought by any of the persons interested in the award against any others or other of them, or against the said arbitrators, touching the matters referred; and all the parties to the said reference shall, at the request of either party, be examined upon oath or affirmation, to be administered by a master extraordinary in chancery, before the acting arbitrators; and the submission to such arbitration shall be made a rule of his Majesty's court of king's bench, pursuant to the statute in such case provided, on application of either of the parties in difference, his, her, or their executors or administrators.

Dissolution of the company by vote.

95th. That it shall be lawful for two-thirds in number of the proprietors entitled to vote, and who shall hold amongst them two-thirds of the paid-up capital of the company, and who shall be assembled at two successive general meetings, to be specially convened for that purpose within the space of three calendar months, to dissolve the company; and the company, after the resolution for dissolving the same at the first of such general meetings shall have been confirm-
54 ed at the second of such meetings, shall be dissolved accordingly to all intents and purposes, except for the purpose of winding up, liquidating, and settling the accounts and affairs of the company, as hereinafter mentioned.

Dissolution of the company after certain losses.

96th. That if at any time after the 25th day of December, 1837, the losses of the company, as ascertained or computed by the directors and auditors, shall be sufficient to exhaust the whole of the reserved surplus fund, and all the premiums, moneys, and funds on hand, and also one-fourth part, of the subscribed capital, then the board of directors shall, with all convenient speed, call a special general meeting of the proprietors, and shall submit to such meeting a full and general statement of the affairs and concerns of the company, and, if required at such meeting, verify and establish such statement by the production of the books, documents, and vouchers; and it shall be thereupon lawful for any one member, at such meeting, in writing, to require that this company be dissolved. And thereupon the company shall be dissolved, unless such a number of the proprietors present at the meeting as shall, amongst them, be entitled to one-half of the shares of the company, shall be desirous of continuing the company, and shall then and there, in writing, undertake so to do, and to purchase the shares of the dissentient proprietors present at such meeting, at the then value thereof, and to indemnify the dissentient proprietors against the existing engagements, and all future losses of the company; such value and the nature of such indemnity to be ascertained, in case of difference, by reference to arbitration, as aforesaid; and on such undertaking being given, the dissolution of the company shall be suspended for sixty days next following; and if within that time the purchase of the shares of the dissentient proprietors shall be completed, in manner hereinafter expressed, then such dissolution shall not take place. And the purchase of the last-mentioned shares shall be considered as completed, for the purposes of this provision, whenever the proprietors proposing to continue the company shall, by writing, have given notice to the dissentient proprietors that they are prepared to pay the purchase-money for their shares, on application by the parties entitled thereto for the same, at the office of the company in Liverpool, and shall, in accordance therewith, have actually paid the same to such of the parties as shall have applied for the same, or, in case of difference as to the amount of such purchase-money, shall have offered to refer the question of such amount to arbitration, as aforesaid, and have proceeded in such arbitration, and have complied with the award made therein, or have been prevented from so doing by the neglect or the default of the other party. And the company, as reduced or newly constituted from time to time, shall be liable to dissolution or discontinuance, from time to time, in like manner and under the like regulations as aforesaid.

Winding up of affairs.

97th. That if the company shall be dissolved the directors shall, with all convenient speed, wind up, settle, and bring to a final rest and balance the accounts and affairs of the company; and for giving effect to such winding-up and settlement, but for no other purpose, the company and the power of the board of directors, and the election of new directors to supply vacancies, shall be held to be continuing, anything hereinbefore contained to the contrary notwith-

standing. And so much of the funds, property, capital, and profits of the company as shall remain, after answering the claims and demands thereon, shall be paid to and distributed amongst the proprietors at the time of dissolution, and their respective executors or administrators, in the proportions in which they shall then be respectively entitled thereto. And to assist in winding up and closing the concerns of the company, bad or doubtful debts or demands, not immediately recoverable, may be sold to any persons not being directors, in one or more lot or lots. And the amount of unclaimed dividends, and of unclaimed shares of capital, shall be invested by the directors in the manner hereinbefore directed for the investment of the capital of the company; and the moneys so invested, and the securities whereon the same shall be invested, and the accumulations of the yearly income thereof, shall from time to time be paid and transferred by the directors unto the persons who shall respectively claim and show title to the same;
and all disputes concerning the title thereto shall be
56 decided by arbitration, in manner herein provided
for the settlement of differences. But if a title to all or any part of such moneys and investments shall not be established within six years from the dissolution of the company, then the moneys and investments to which no title shall then have been established shall be applied as part of the capital of the company, for the benefit of the then ascertained parties among whom the remainder of the capital shall be distributable or have been distributed pursuant to the provisions lastly hereinbefore contained; and the effluxion of the said term of six years shall bar and be conclusive against all persons claiming against the same, whether under any legal disability or incapacity or not.

98th. That in every case in which any notice is directed to be given or sent to any proprietor, or any meeting of proprietors is authorized to be convened, the same shall, unless otherwise expressed or directed, be given, sent, or conveyed by a written or printed letter, to be signed as the board of directors shall appoint in that behalf; and such letter shall be directed to the persons to whom the same notice is to be given or sent, at their places of abode, as stated in the register of proprietors, and shall be forwarded through the Liverpool post office, and shall be effective for all purposes for which such notice is required to be given, although the same shall not, after being committed to the post office, reach its place of destination; and the same shall, to all intents and purposes, be considered to have been given to the party to whom the same shall be directed, on the day on which the same shall be committed to the post office. Notices to proprietors.

99th. That whenever, in these presents, words are used importing the singular number only, or with reference to persons importing males only, yet these presents and the provisions thereof shall be held and construed to include several persons as well as one person, and the converse, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or Construction of this deed.

there be something in the subject or context repugnant to such construction.

Deed may be enrolled.

100th. That the board of directors shall, if they shall deem it expedient, cause these presents, and any future or
57 supplementary deed or deeds of settlement of the company, to be enrolled in the high court of chancery; and the same shall afterwards be deposited at the office of the company in Liverpool, in such custody as the said board shall think fit, and shall at any time, on the request and at the proper costs and charges of the parties thereto respectively, or any of them, or of any other persons, if the directors shall think fit, be produced on any trials, hearing or hearings, in any court of law or equity, or otherwise, as occasion may require.

Charter or act of Parliament may be applied for.

101st. That if it shall appear to the board of directors to be desirable that the company shall be incorporated, or that their power shall be extended in such manner, or that they shall obtain such privileges as cannot be effected by the acts of the individuals constituting the company, or the major part in number of them, the directors shall and may apply for and solicit, and, if possible, procure a charter or charters of incorporation under the great seal, or an act or acts of Parliament, as they may deem expedient, and, upon obtaining such charter or act of Parliament, shall and may submit the proprietors to such individual liabilities, as to their persons and properties, as may be imposed on them by way of conditions for obtaining the same charter or act; and shall and may comply with any other conditions or restrictions which either Parliament or government may think fit to impose, notwithstanding the same may be inconsistent and at variance with any of the existing rules and regulations of the company; and shall and may pay and defray the costs and expenses incident to such application for, and, as the case may be, of procuring such charter or act, charters or acts, out of the funds of the company.

Pleading in abatement not allowed.

102d. And it is hereby expressly agreed, that no proprietor of this company (except in the case of one or more directors, subscribing any policy of insurance, being sued without the plaintiff or plaintiffs making or joining the other or others of the subscribing directors as a co-defendant or co-defendants) shall, upon any occasion, plead or cause to be pleaded in abatement the nonjoinder of other parties, or otherwise take any advantage thereof which might
58 be had at law or in equity relative to the affairs of this company; and that in case any member shall so plead or act, any such plea may be treated as a nullity and of no effect; and he who shall so offend in the premises shall thenceforth, at the option of the directors, cease to be a proprietor of the company, and be excluded from all future benefit therefrom, and forfeit all his shares in the company, and all interest and dividends then due thereon; and there shall be recoverable from such persons the costs of every nonsuit and delay which shall be occasioned by any such pleadings or other matter aforesaid; but the directors shall have power to remit or waive any such forfeiture or costs, or any part therof, at their discretion.

103d. That it shall be lawful for the directors, in their discretion, to receive proposals in this country for and to effect insurances, (as well against fire as on lives and survivorships,) and to carry on the other objects and business of the company, as well in the colonies or dominions of this kingdom as in foreign parts, upon such terms and conditions as they shall deem expedient. And further, that if deemed expedient for better conducting such foreign business, it shall also be lawful for the directors, (with the previous consent of some annual or special general meeting of the proprietors,) in their discretion, to appoint and employ agents in parts beyond seas for effecting such insurances, and transacting other the business of the company, in such colonies and dominions and in foreign parts, for such purposes and under such restrictions and conditions as shall be directed by such general meeting, and so that such agents give security for their fidelity, to the satisfaction of the directors, from time to time.

Foreign insurances.

Agents abroad for foreign insurances.

104th. And this indenture also witnesseth that the said several persons, parties hereto of the first part, have, and each of them hath, ratified and confirmed, and by these presents do, and each and every one of them doth, ratify and confirm, all the acts, deeds, matters, or things which, up to the day of the date of these presents, have been done, executed, and performed by the present directors of the company, or any of them, in regard to the establishment of the company, or the business thereof, or the
59 funds or property thereof, or in any wise relating thereto respectively. And whereas it may be frequently necessary to transmit these presents, for the execution by shareholders, or for other purposes, to different places and in order to guard against the consequences of loss or destruction of the same, it hath been deemed expedient that two parts thereof, or duplicates of each other, should be prepared and executed, and inasmuch as many of the persons who shall execute one part of these presents may not execute the other part or parts, it has also been thought expedient, in order to preserve entire conformity between the parts, to empower some person as the attorney of the party who shall have executed only one part of this deed to sign, seal, and deliver the other part or parts in the name of the person whose personal signature and execution shall not appear to the other part or parts. Now, this indenture also witnesseth that for effectuating the purposes last aforesaid, each and every of the said parties hereto of the first part, whose personal signature shall not be subscribed to each part of this deed of settlement, doth hereby make, ordain, constitute, and appoint the said Swinton Boult, and also such other person as shall for the time being be the secretary of the company, the lawful attorney of him or her the proprietor, who, as the party to these presents, shall have executed one part only of the deed, and in the name and as the act and deed of the same proprietor, to sign, seal, deliver, and execute the duplicate or counterpart of this present deed of settlement, he or she, the constituent, hereby declaring that every duplicate or

Confirmation of previous acts of directors.

counterpart of this deed so executed by his or her attorney, shall be of the like force and effect as if executed by him or her, and hereby agreeing to ratify and confirm all and whatsoever such attorney shall lawfully do in the premises, by virtue of this present power.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

60 *Supplemental deed of settlement.*

Parties.

This indenture, made twenty-eighth day of February, 1851, between William Nichol, Joseph Christopher Ewart, Joseph Hornby, Thomas Brocklebank, William Dixon, William Earle, Thomas Steuart Gladstone, Francis Alexander Hamilton, George Grant, Francis Haywood, Robert Higgin, George Holt, John Hore, George Hall Lawrence, Harold Littledale, John Marriott, Edward Moon, Charles Saunders, Herman Stolterfoht, John Swainson, James Aspinwall Tobin, all of Liverpool, in the county of Lancaster; William Ewart, George Frederick Young, Sir William Plunkett de Bathe, bart., William Brown, Matthew Forster, Frederick Harrison, James Hartley, Ross Donolly Mangles, the Honorable Frederick Ponsonby, John Ranking, James Marmaduke Rosseter, Seymour Teulon, all of London, the present directors of the Liverpool and London Fire and Life Insurance Company, and the several other persons whose names are hereunto subscribed and seals affixed, (except the persons parties hereto of the second part,) of the first part; and Sir Thomas Bernard Birch, bart., of Red Hazles, in the county of Lancaster, Adam Hodgson, of Liverpool, aforesaid, esquire, and Samuel Henry Thompson, of Thingwall Hall, near Liverpool, aforesaid, esquire, the trustees of the said insurance company, of the second part.

The directors and proprietors of the first part.

The trustees of the second part.

Recites deed of settlement.

Whereas, by indenture dated the twenty-first day of May, 1836, the said insurance company, under the style of "The Liverpool Fire and Life Insurance Company," was established and constituted; and whereas an act was passed in the seventh year of the reign of his late Majesty King William the Fourth, entitled "An act to enable the Liverpool Fire and Life Insurance Company to sue and be sued in the name

61 of the chairman, deputy chairman, or any one of the directors of the said company, and for other purposes."

First act of Parliament.

Second act of Parliament.

And whereas another act was passed in the eleventh year of the reign of her present Majesty, entitled, "An act to change the name of the Liverpool Fire and Life Insurance Company, and for other purposes relating thereto," whereby the name of the said company was changed to the Liverpool and London Fire and Life Insurance Company. And whereas in the said deed of settlement power is given to amend, alter, or repeal, in manner therein mentioned, any of the provisions therein contained, and also power to make any new regulations or provisions for the better management of the said company, and for the embodiment of such alterations, from time to time, in a supplemental deed. And whereas, in pursuance of the power contained in the said deed of settlement, as otherwise, the alterations of, and additions to, the pro-

Power to alter and make new laws.

That alterations have been made.

visions of the said deed, which are hereinafter mentioned, have been made and acted upon from time to time, and it is deemed expedient to embody in a supplemental deed such alterations and additions. And whereas, in pursuance of the powers contained in the said deed of settlement, and of the provisions in that behalf hereinafter mentioned, the directors, for the purpose of extending their business in foreign countries, have allotted, and may hereafter, from time to time, allot shares to persons being foreigners, resident in such foreign countries, and such foreign or non-resident shareholders have executed, and all future foreign or non-resident shareholders, prior to their becoming such, will execute a certain indenture dated the 31st day of December, 1850, in which deed certain provisions are contained relative to the mode of giving notices to, and the service of legal process upon, and the payments of dividends to such foreign or non-resident shareholders, and other provisions applicable to such class of shareholders. And whereas it is also expedient, and is hereby intended to ratify and confirm the acts and proceeding of the directors of the said company, in the extension of the business of the said company as aforesaid and otherwise, up to the day of the date hereof:

That shares have been allotted to foreign shareholders.

And deed signed by them.

That it is intended to ratify acts of directors.

Witnesseth.

Now this indenture witnesseth that each of the several persons, parties hereto of the first part, for himself
62 and herself, and for his and her own heirs, executors, and administrators, and for and concerning the acts, deeds, and defaults only of himself and herself, and of his and her own heirs, executors, and administrators only, and not further or otherwise, doth hereby severally and respectively covenant and agree, as well with one another and his or her executors, administrators, and assigns, as with the said Sir T. B. Birch, Adam Hodgson, and Samuel Henry Thompson, their executors, administrators, and assigns, in manner following, that is to say:

Residence of directors.

1st. That residence within 20 miles of the town hall of Liverpool shall no longer form part of the necessary qualification of the directors of the company.

Power to appoint a finance committee.

2nd. That the provision in the 60th section of the deed of settlement requiring the concurrence of a majority of at least eleven of the directors, as to the investment of funds of the company in the manner therein specified or referred unto, having been found inconvenient in practice, such restriction be, and the same is hereby, repealed; and that in lieu thereof the directors be, and they are hereby, authorized to make any such investments of the company's funds by a special committee to be appointed for that purpose, in manner provided by the 33rd section of the deed, and to be called the finance committee, and to delegate to such special committee, from time to time to be appointed, the authorities and discretion of the entire board of direction in these respects.

Appointment of local boards, and regulating the same.

3rd. That it shall be lawful, and power is hereby given to the board of direction for the time being, from time to time, to appoint in London, Edinburgh, Dublin, and any other place or places in the United Kingdom, or in any district, city, town, or place in any colony or possession of the United

Kingdom, or in any foreign country, local boards of directors, consisting of resident proprietors, in any such district, city, town, or place, duly qualified, as is required from time to time of members of the board of direction of the company, and to determine the number at each place, and nominate and appoint the individuals, who there shall constitute the local board and the quorum thereof, as the board of
63 direction in their discretion shall think fit; and to fix and vary from time to time the powers, duties, and remuneration of each such local board, and to accept the resignation of, and remove any, member of any such local board, and to fill up from time to time all vacancies, however occasioned, at such time and in such manner as to the said board of direction may seem fit, and generally to make rules and regulations for the guidance and government of the proceedings of such local boards; and each and every such local board shall at all times and in all things be subject to and abide by the rules and resolutions so made by the board of direction of the company for the time being.

Members of local boards to accept office.

4th. That any proprietor nominated to sit on any local board of directors shall signify in writing his willingness to undertake the duties of such office.

No member of a local board to vote when interested.

5th. That no member of any local board shall vote on any question, or, as a member of any such board, be present at the discussion of any question, in which he himself, or any partner or relation, shall be interested.

Members of the direction and the secretary of the company to be ex officio members of all local boards.

6th. That the members of the board of direction of the company for the time being, and also the secretary of the company for the time being, shall, when present, be ex officio members of each and every local board, with the same powers as to voting, and in all other respects, as any other member of such local board.

Members of the board in London to be members ex officio of the board of direction of the company.

7th. That the members of the board of direction in London, so long as such board shall be continued, shall, when present, be members ex officio of the board of direction of the company, with the same powers, in all respects, as any other member thereof; and the number to which the board of direction now is, or at any time hereafter may be, limited, shall, for the purpose of carrying out this regulation, be extended as occasion may require.

Board of direction to be empowered to delegate all their powers to any local board.

8th. That the board of direction shall have full power and authority, from time to time, to delegate to each or any such local board, in such manner as they shall be advised and think proper, all and singular, or any of the functions, duties, privileges, and powers with which they now
64 are or hereafter may be invested, including the power to sign policies, to appoint and employ agents, to execute letters of attorney, to retain, invest, and employ, on behalf of the company, any money, securities for money, or other property of the company which may come into their hands, and to arrange for the proper signature and indorsement of all bills of exchange, promissory notes, cheques, or other negociable securities; including also the power to settle losses by agreement, arbitration, or by due course of law; and generally to do such other acts as may be necessary for the full and complete discharge and performance of all matters and things connected with the business of the company

in the country, district, city, town, or place for which such local board may be appointed.

Investments by local boards to be made in conformity with instructions from board of direction of the company.

9th. That any investment that may be made by any such local board, in pursuance of the powers to be given to them, shall be in conformity with the instructions as to the nature and kind of securities to be taken which the board of direction of the company may transmit from time to time; and such investment shall be upon the same kind of securities as those prescribed in the 60th clause of the deed of settlement of the 21st May, 1836. And any investment made in any British colony or possession, or in any foreign country, shall be made and taken in the names of three trustees who shall be residents in such colony or possession, or, if in a foreign country, who shall be citizens of the state or country in which the subject of the investment shall be situated; and that such trustees shall be approved by the board of direction of the company by resolution, to be duly entered on the minutes of their proceedings.

Agents may be empowered to sign policies.

10th. That the board of direction be, and they are hereby, empowered to delegate to any duly appointed agent of the company, in any place in which no local board is established, the power to sign policies by power of attorney in their behalf.

Charter in foreign countries may be obtained.

11th. That the board of direction be, and they are hereby, empowered, from time to time, to take such steps as they may think expedient for the purpose of obtaining a charter, or other act of recognition, from any foreign government in whose dominions any such local board of directors may be established, in such form and for such purposes as they may deem advisable and be able to procure.

Reserved surplus fund.

12th. That it is expedient to make further provision for the increase and maintenance of the reserved surplus fund, so as to insure its being at all times equal to the growing importance and extended operations of the company; and for this purpose it is hereby arranged and agreed that all premiums received on shares in the capital stock of the company shall be carried, when received, to the credit of the reserved surplus fund, and become part thereof; and the board of direction of the company shall, at their absolute discretion, have power to increase the reserved surplus fund out of the ordinary or extraordinary profits of the company, and to fix from time to time, by resolution to be duly entered on their minutes, the sum below which it shall not be reduced, without having that operation on the dividend to be declared in any year which is prescribed in the 64th clause of the deed of settlement of the 21st May, 1836, with reference to the £100,000 therein mentioned, provided that it be clearly stated to the proprietors in the report of the annual meeting, immediately succeeding the adoption of any such resolution, what is the minimum sum which has so been fixed, and that neither this clause nor any such resolution shall authorize the reduction of the reserved surplus fund below £100,000, or affect in any way the provisions contained in the said deed of settlement with reference to the objects of the reserved surplus fund as therein defined.

Reinsurance fund.

13th. That, in addition to the reserved surplus fund, it is essential to institute a reinsurance fund, the amount of which shall be regulated by and vary with the premiums on fire business received within the year, it being intended that such fund should be of equal amount with those premiums; and the board of direction is hereby authorized and instructed to make it up to that sum by such degrees and at such time as in their discretion shall seem fit.

Foreign shareholders to be represented by chairman at meetings, if they do not appoint some other person to represent them.

14th. That if any proprietor, who shall reside out of the United Kingdom, shall omit to appoint (and give notice of such appointment to the secretary of the company) 66 some person resident in the United Kingdom to represent such proprietor in all matters relative to his proprietorship, and to whom any notices requisite to be given to such proprietor may be addressed, it shall not be necessary to give any notice whatever to any such proprietor of any meeting of the company, or for any other purpose; and the chairman of the company, for the time being, (upon the representation of the secretary that no such notice has been received,) shall represent and vote for such proprietor at such meetings, and such votes shall have the same force and effect in all things as if given by such proprietor in person.

Confirmation of, and extension of, this deed to the deed of 21st May, 1836.

15th. That all the clauses and provisions of the said deed of settlement, dated the 21st day of May, 1836, except in so far as the same are altered or repealed by these presents, are hereby ratified and confirmed; and these presents shall be read and construed as part and as in extension of the said deed of settlement in the same way as if they constituted one deed, and all the powers and authorities given to the board of direction of the company, or to the secretary of the company, by the said deed of settlement, shall apply and be applicable to these presents in the same way as if expressly set out at length herein. And this indenture further witnesseth that the said several persons, parties hereto of the first part, do, and each of them doth, hereby ratify and confirm all the acts, deeds, matters, or things which, up to the day of the date of these presents, have been done, executed, and performed by the board of direction of the company, or any of them, in any wise relating to the business of the said company.

Confirmation of acts of the board of direction.

In witness, &c.

67 *Second supplemental deed of settlement.*

This indenture, made the seventh day of January, one thousand eight hundred and sixty-three, between the several persons whose names are hereunto subscribed and seals affixed, (except such of the same persons as are parties hereto of the second part,) of the one or first part, and Thomas Brocklebank, Harold Littledale, and James Aspinall Tobin, all of Liverpool, in the county of Lancaster, esquires, of the second part.

Parties.

Whereas the persons, parties hereto of the first part, are interested as shareholders or stockholders in the capital of the Liverpool and London Fire and Life Insurance Com-

pany, (hereinafter termed The Company,) and some of them are directors of The Company, and the persons parties hereto of the second part are trustees of The Company. And whereas The Company was established and constituted under the name of the Liverpool Fire and Life Insurance Company, by an indenture (hereinafter termed "The original deed of settlement") dated the twenty-first day of May, one thousand eight hundred and thirty-six, and an act of Parliament was passed in the seventh year of the reign of his late Majesty King William the Fourth, intituled "An act to enable the Liverpool Fire and Life Insurance Company to sue and be sued in the name of the chairman, deputy chairman, or any one of the directors of the said company, and for other purposes;" and another act of Parment was passed in the eleventh year of the reign of her present Majesty, entituled "An act to change the name of the Liverpool Fire and Life Insurance Company, and for other purposes relating thereto;" and by an indenture or supplemental deed of settlement, dated the twenty-eighth day of February, one thousand eight hundred and
68 fifty-one, certain alterations of or additions to the provisions of the "original deed of settlement" were made or confirmed. And whereas, according to the original deed of settlement, the capital of the company was to be two million pounds sterling, divided into one hundred thousand shares of twenty pounds each; but by the twentieth section of the same deed it is declared (among other things) to the effect that it should be competent for any general meeting, whether annual or special, to decrease the capital of the company in any manner deemed eligible, and also to increase the capital of The Company in any manner deemed eligible, and that it should be competent for any such general meeting to make any new laws, orders, regulations, or provisions for better managing The Company, and the business affairs and concerns thereof, and to amend or alter, repeal or make void, any of the existing laws, regulations, and provisions thereof, and to cause all or any of such new laws, orders, regulations, or provisions to be embodied in any supplemental deed of settlement to be made from time to time for the government of The Company; but the same section provides, among other things, (to the effect,) that no resolution that should have for its object the decrease or increase of the capital of the company, or the abrogation, enlargement, or alteration of any of the clauses, powers, or provisions in that deed, or the making or executing any other deed of settlement, should be valid, unless the same resolution, after having been passed at a general meeting, either annual or special, should be confirmed by a special general meeting, to be convened by the board of directors expressly for that purpose, and to be held within one calendar month next after such first-mentioned meeting, and in which confirmation there should concur at least two-thirds in number of the parties present and voting, if no ballot were demanded; or, in case of a ballot, then two-thirds of the votes given at such ballot. And whereas, at the twenty-third annual general meeting of the proprietors

Recites previous acts.

Power to make alterations.

Alterations made.

of the said company, held on the seventeenth day of February, one thousand eight hundred and fifty-nine, it was resolved that the capital of The Company, which by the third clause of the deed of settlement was directed to be divided into one hundred thousand shares, was
69 thereby converted into stock. That in lieu of the shares then held by the several proprietors, the same proportion of stock should be issued to and held by them, viz., for every fifty shares on which two pounds each had been paid, or was then due, one hundred pounds of stock should be substituted, and any greater or less number of shares should be converted into a corresponding amount of stock. That the qualification of a director should be one hundred pounds of stock. That nothing in those resolutions contained should alter or vary in any respect the rights and privileges of the proprietors, dependant on the number of shares held by them, but that such rights and privileges as to voting or otherwise should continue undisturbed, and should be exercised in respect of a corresponding amount of stock to shares as thereinbefore mentioned, and that the alterations in the company's deed of settlement necessary to carry out those resolutions should be made. And whereas, at a special general meeting of the proprietors of the said company, held on the eighth day of March, one thousand eight hundred and fifty-nine, and by a ballot taken in consequence of the same having been called for at such meeting, the said recited resolutions were confirmed. And whereas, at a special general meeting of the proprietors of The Company, held on the 10th day of December, one thousand eight hundred and sixty-two, seven resolutions were passed in the words or to the effect of the clauses of these present, which are respectively numbered 2, 6, 7, 8, 9, 10, and 11, and it was at such meeting also resolved that the draft of a supplemental deed of settlement (meaning thereby these presents) submitted to that meeting, and which embodied the last seven resolutions, or to the purport thereof, and provisions for effectuating the same, and certain alterations of or in and additions to the existing laws of the company, should be and the same was thereby adopted and ratified. And whereas, at a special general meeting of the proprietors of The Company, held on the twenty-ninth day of December, one thousand eight hundred and sixty-two, the resolutions passed as aforesaid at the said meeting of the tenth day of December, one thousand eight hundred and sixty-two, were confirmed.

New deed of settlement adopted and ratified.

Proprietors bound hereby.

70 And therefore this indenture witnesseth that each of the several persons parties hereto of the first part, for himself or herself, and his or her own heirs, executors, and administrators, doth hereby covenant and agree with the others and every two or more and each one of the others of them, their, his, and her respective executors and administrators, and also with the said persons parties hereto of the second part, their executors, administrators, and assigns, and each of the said persons parties hereto of the second part, for himself and his own heirs, executors, and administrators, doth hereby covenant and agree with the

others and each of them, their, and his respective executors, administrators, and assigns, in manner following, that is to say:

Shares consolidated into stock.

1st. That as from the eighth day of March, one thousand eight hundred and fifty-nine, there shall be substituted for and in lieu of the third clause of the original deed of settlement the next following provision, that is to say: That the capital of the company shall be two million pounds sterling, issuing as stock, but such capital may be increased or decreased as hereinafter expressed, and the allotment and issue of so much of the said capital of two million pounds as, together with the amount thereof already issued, will make up the sum of five hundred thousand pounds, or one equal fourth part of the said capital, shall exclusively appertain to and be made by the directors for the time being at their discretion, and the allotment and issue of the sum of one million five hundred thousand pounds, being the remainder of the said capital, shall also appertain to and be made by the directors for the time being, under the authority nevertheless of a resolution of some general meeting, either annual or special, of the company.

Amount payable in respect of calls surrendered.

2nd. That for better effectuating the object of the last preceding clause, the total amount payable in respect of calls not made on so much of the capital of the company as heretofore consisted or now consists of shares, shall be and is hereby surrendered and restored to the company by the several proprietors, to the intent that the same may become and be dealt with as part of the unissued capital stock of the company.

Power to increase or decrease capital.

3rd. That for and in lieu of that portion of the 20th 71 clause of the original deed of settlement which provides for the decrease or increase of the capital or joint stock of the company, and for the sale, allotment, appropriation, and disposition of additional shares, and for subjecting such additional shares to the provisions of the original deed of settlement, and which defines the title, benefit, rights, and privileges of the holders of such additional shares, there shall be substituted the next following provision, that is to say: That it shall be competent for any general meeting, whether annual or special, to decrease the capital or joint stock of the company, by reducing or diminishing the total amount of two million pounds, of which the same consists, and also to increase the capital of the company, and to raise such increased capital by creating over and above the said sum of two million pounds an additional amount of stock, and to cause such additional stock to be sold at such prices as the directors for the time being can obtain for the same, or to be allotted, apportioned, or appropriated to subscribers or purchasers, whether present or future proprietors or not, as the directors in their discretion shall determine, or to be disposed of or appropriated by both or either of those means, and such additional stock shall be subject to all the provisions of the original deed of settlement and the supplemental deeds of settlement and the acts of Parliament relating to the company, and shall entitle the holders, from the time of be-

coming such, to the same benefits, rights, and privileges in respect thereof as if the same had formed part of the stock constituting the original capital of two million pounds.

Proprietors released from payment of calls.

4th. That that portion of the 20th clause of the original deed of settlement which provides that no act, order, or resolution be done or passed at any such meeting to release any of the proprietors from their respective liabilities to pay the full sum payable by them in respect of every share in the capital of the company, or from their covenants in that behalf, shall be and is hereby repealed, as from the said eighth day of March, one thousand eight hundred and fifty-nine.

Powers applicable to stock.

5th. That all powers, rights, duties, restrictions, and obligations by the several hereinbefore recited indentures and acts of Parliament, or any of them, given to and im-

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posed upon any one or any body of the directors or proprietors of the said company, with reference to the number of shares in the capital thereof held by him or them respectively, shall be exercisable and operate and take effect as from the said eighth day of March, one thousand eight hundred and fifty-nine, with reference to the equivalent amount of stock of or in the said company, held by him or them respectively, that is to say: The equivalent for each one of the shares into which it was provided by the third clause of the original deed of settlement that the capital of the said company should be divided shall be two pounds of the said stock.

Restrictions in issuing stock in foreign countries.

6th. That it shall be lawful for the directors for the time being in issuing stock in foreign countries and the British colonies, or any of them, to impose restrictions rendering such stock transferable only in the country or colony where the same shall in each case be issued.

Power to convert existing dividends into perpetual annuities.

7th. That notwithstanding anything in the hereinbefore recited indenture or acts of Parliament to the contrary contained, the expectant dividends on all or any part of the issued capital or subsisting stock for the time being of the company may be converted at any time, or from time to time, into perpetual annuities (such annuities not altogether exceeding sixty thousand pounds a year) to be granted by the directors for the time being on behalf of the company to the proprietors the dividends on whose stock is proposed or about to be so converted, in consideration of the transfer by them respectively of such stock to such persons as the directors for the time being may appoint, and upon such other terms, and subject to such rules and regulations as such directors shall deem expedient; but no such conversion of the dividends on any stock shall be made without the consent of the registered proprietor for the time being of the same stock.

Date of general meeting.

8th. That the 7th clause of the original deed of settlement shall be, and is hereby, repealed, and, in lieu thereof, it shall be a rule, order, or regulation of the company that a general meeting of the proprietors of the company shall be called at such place in Liverpool as the directors for the time being shall appoint, between eleven in the forenoon and three in the afternoon, on the twenty-sixth day

73 of February, in the year one thousand eight hundred and sixty-three, and on the sixteenth day of February in every succeeding year, or within ten days next following, and at such other times as they shall be duly convened, in manner expressed in the original deed of settlement, and that every meeting so held in the month of February in every year shall be styled an annual general meeting, and that every other meeting so convened as aforesaid shall be styled a special general meeting.

Power to sign policies.

9th. That the power given by the 42nd section of the original deed of settlement to any three of the directors to sign and execute policies of insurance shall hereafter be exercisable by any two of the directors for the time being of the company.

Directors restricted from certain investment of funds.

10th. That notwithstanding anything to the contrary in the hereinbefore recited indentures and acts of Parliament, or any of them, to the contrary contained, it shall not be lawful for the company or the directors for the time being thereof to invest the funds or property of the company, or any part thereof, in shares of or in any joint-stock banking company, or any company the liability of the shares in which is not limited by act of Parliament.

Power of directors in investing funds.

11th. That notwithstanding anything in the hereinbefore recited indentures and acts of Parliament, or any of them, to the contrary contained, it shall be lawful to the directors for the time being of the said company to cause all or any part of the funds for the time being in the hands of the bankers thereof (except such sum as they shall think fit to leave in the hands of such bankers to answer current payment and expenses) to be laid out and invested in the names of the trustees of the company, or any three of them, either in or upon any one or more of the investments or securities which are mentioned or referred to in the 60th clause of the original deed of settlement, (except such shares as are mentioned in the last clause,) or in the purchase of hereditaments of any tenure, either in the United Kingdom or elsewhere, all which hereditaments, if any such be so purchased, shall be under the control and management of the directors

74 for the time being, so long as the same are held in trust for the company, and shall during that period be mortgaged or otherwise dealt with by such directors as they shall deem expedient, but the same, or any of them, may at any time, or from time to time, be absolutely sold, in such manner and under such conditions as the directors for the time being shall sanction or order.

Acts of directors ratified.

12th. And this indenture further witnesseth that the several persons parties hereto do, and each of them doth, hereby ratify and confirm all the acts, deeds, matters, or things which, up to or before the day of the date of these presents, have been done, executed, and performed by the directors of the said company, or any of them, in any wise relating to the business and affairs of the said company.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

75 *The act of Parliament.—Anno Sexto & Septimo Gulielmi IV Regis.*

Cap. CXIX.

An act to enable the Liverpool Fire and Life Insurance Company to sue and be sued in the name of the chairman, deputy chairman, or of any one of the directors of the said company, and for other purposes.

[14th July, 1836.]

Whereas several persons have formed themselves into a company or partnership in Liverpool, in the county palatine of Lancaster, by the name of "The Liverpool Fire and Life Insurance Company," and have subscribed or raised considerable sums of money in order to effect insurances on houses, warehouses, and buildings, shipping in port, goods, wares, merchandize, farming stock, utensils, and property of all descriptions, against loss or damage by fire, insurances on lives and survivorships, the sale and purchase of annuities, reversions, and contingent interests, and the endowment of children, and generally to carry on the business usually called or known as fire insurance and life insurance, and all matters connected therewith. And whereas difficulties may hereafter arise in recovering the debts due to the said company, called "The Liverpool Fire and Life Insurance Company," and in maintaining actions for damages done to the said company, or to the property of the
76 said company, since by law all the members for the time being of the said company must be named in every action or suit carried on for such purpose. And whereas it would be convenient that persons having demands against the said company should be entitled to sue the chairman, deputy chairman, or one of the directors for the time being of the said company. And whereas it would be convenient that prosecutions for embezzlements, robbery, or stealing the property of the said company, or for fraud or any other offence against the said company, should be instituted and carried on in the name of the chairman, deputy chairman, or one of the directors for the time being of the said company, and that in all indictments and informations it should be lawful to state the property of the said company to be the property of such chairman, deputy chairman, or director for the time being of the said company:

Wherefore, for obviating and removing the difficulties aforesaid, may it please your Majesty that it may be enacted,

And be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act, all actions and suits, and also all petitions to found any commission of or fiat in bankruptcy in England or Ireland, or any sequestration in Scotland against any person or persons indebted to the said company, and

Company may sue and be sued in the name of the chairman, &c.

liable to be made bankrupt by the laws now or at any time hereafter in force relative to bankrupts and traders, or to sequestrations, and all proceedings at law or in equity under any commission of or fiat in bankruptcy, or under any sequestration to be awarded in consequence of any such petitions, and all other proceedings at law or in equity to be commenced, instituted, or carried on, by or on behalf of the said company, or wherein the said company is or shall be concerned or interested against any person or persons, body or bodies politic or corporate, whether such person or persons, body or bodies politic or corporate, is, or are, or shall then be, a member or members, proprietor or proprie-
77 tors, of or in the said company or not, shall and lawfully may be commenced, instituted, presented, and prosecuted or carried on in the name of the person who shall be the chairman of the said company at the time such action, suit, or proceeding shall be commenced or instituted, or in the name of any one deputy chairman or director for the time being of the said company, as the nominal plaintiff or petitioner for and on behalf of the said company; and all actions, suits, and proceedings in law or in equity to be commenced or instituted against the said company by any person or persons, body or bodies politic or corporate, whether such person or persons, body or bodies politic or corporate, is or are, or shall then be, a member or members, proprietor or proprietors, of or in the said company or not, shall be commenced, instituted, and prosecuted against the said chairman for the time being, or against the deputy chairman or any one director for the time being of the said company, as the nominal defendant or respondent for and on behalf of the said company; and in case there shall not then be any person elected and acting and officiating as chairman, deputy chairman, or director of the said company, then every such action and suit shall be commenced, instituted, and prosecuted against any person who was the chairman, deputy chairman, or a director of the said company at the time the contract or contracts was or were entered into upon or in respect of which such action, suit, or proceeding may be brought or instituted; and all prosecutions to be brought, instituted, or carried on, by or on behalf of the said company, for fraud upon or against the said company, or for embezzlement, robbery, or stealing any money, notes, bills, effects, securities, goods, chattels, or property of the said company, or for any other offence against the said company, shall and lawfully may be so brought or instituted and carried on in the name of such chairman, or of any one of the directors for the time being of the said company, and in all indictments and informations it shall be lawful to state the property of the said company to be the property of such chairman, deputy chairman, or director for the time being of the said company, and any offence committed with intent to injure or defraud the said company shall and law-
78 fully may in such prosecution be laid to have been committed with intent to injure or defraud such chairman, deputy chairman, or director for the time being of the said company, and any offender or offenders may

thereupon be lawfully convicted of any such offence; and in all other allegations and indictments, informations or other proceedings, in which, before the passing of this act, it would have been necessary to state the names of the persons composing the said company, it shall be lawful and sufficient to state the name of such chairman, deputy chairman, or director; and the death, resignation, or removal, or other act of such chairman or director, done without the consent of the said company, shall not abate any such action, suit, proceeding, or prosecution.

No action against the company to be affected in consequence of the plaintiff being a proprietor.

II. *And be it further enacted*, That no action against the said company, their chairman, deputy chairman, or director, upon or arising out of any policy or contract entered into by or on behalf of the said company, shall be in any wise affected or defeated by or by reason of the plaintiff or plaintiffs therein, or of any other person or persons in whom any interest may be averred, or who may in any wise be interested or concerned in such action, being a proprietor or proprietors, or a partner or partners, in the said company; but any proprietor or proprietors, partner or partners, in the said company, shall and may have the same right of action and remedy, to be proceeded in and enforced in the same manner, against the said company, their chairman, deputy chairman, or director, upon any policy or other contract, and upon any demand for return of premiums, and upon and for any debt, damages, or demand whatsoever, which he or they might have had if he or they had been a stranger or strangers, and not a proprietor or proprietors, partner or partners, in the said company.

No action commenced by the company to be affected in consequence of the defendant being a proprietor.

III. *And be it further enacted*, That no action commenced by or on behalf of the said company, their chairman, deputy chairman, or director, upon or arising out of any policy or contract entered into by or on behalf of the said company, shall be in any wise affected or defeated by or by reason of the defendant or defendants therein, or of any other person or persons in whom any interest may be averred, or who may be in any wise interested or concerned in such action, being a proprietor or proprietors or a partner or partners in the said company, but the said company shall and may have the same right of action and remedy, to be proceeded in and enforced in the same manner against any proprietor or proprietors thereof, or partner or partners therein, either alone or jointly with any other person or persons, upon any policy or other contract, and upon and for any debt, damages, or demand whatsoever, which the said company might have had if such cause of action had arisen with a stranger or strangers, and not a proprietor or proprietors, partner or partners, in the said company.

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Names of members to be enrolled in the high court of chancery.

IV. *And be it further enacted*, That the directors of the said company shall cause a memorial of the name and names of the chairman and of the directors, and of the several persons being members or proprietors of the said company, in the form or to the effect for that purpose expressed in the schedule to this act annexed, to be enrolled upon solemn declaration in the high court of chancery within three calendar months next after the passing of this act; and when

any new chairman or deputy chairman, or any new director or directors, shall be elected, or any transfer of any share or shares of any proprietor of the said company shall be made, then the directors for the time being of the said company shall cause a memorial thereof in like manner to be enrolled upon solemn declaration as aforesaid, within three calendar months afterwards, in the form or to the effect expressed in the said schedule for that purpose.

No action to be brought until memorial enrolled.

V. *Provided always, and be it further enacted*, That until such memorial as first hereinbefore mentioned shall have been enrolled in manner herein directed, no action or suit shall be brought by the said company under the authority of this act; and until the memorial by this act required to be enrolled in the event of any change in the chairman, deputy chairman, directors, or proprietors of the said company shall have been enrolled, as hereinbefore mentioned, all the shareholders whose names shall appear in the enrollment immediately preceding such change, shall be and are hereby declared to be liable to all such executions or diligences upon judgment or decree as are hereinafter mentioned.

Execution upon any judgment may be issued against any member of the company, &c.

VI. *Provided always, and be it further enacted*, That execution or diligence upon any judgment or decree in any such action or suit obtained against the chairman, deputy chairman, or any one director for the time being of the said company, whether as plaintiff or pursuer, or as defendant, respondent, or defender, may be issued against any director or directors, or proprietor or proprietors, for the time being of the said company: *Provided always*, That every such chairman, deputy chairman, or director in whose name any such action or suit shall be commenced, prosecuted, or defended; and every such chairman, deputy chairman, director or directors, proprietor or proprietors, against whom execution or diligence upon any judgment or decree obtained in any such action or suit shall be issued as aforesaid, or as hereinafter is mentioned, shall always be reimbursed and paid out of the funds of the said company all such loss, damages, costs, and charges as by the event of any such proceedings he or they shall be put unto or become chargeable with: *Provided always*, That in case such execution or diligence against the chairman, deputy chairman, or director or directors, or proprietor or proprietors, for the time being of the said company, shall be ineffectual for obtaining payment and satisfaction for the sum or sums sought to be recovered thereby, it shall be lawful for the party or parties so having obtained judgment or decree against the chairman, deputy chairman, or any one director for the time being of the said company, to issue execution or diligence against any other person or persons who was or were a proprietor or proprietors thereof at the time the contract or contracts was or were entered into upon which such action or suit may have been brought or instituted; but no such execution or diligence as last mentioned shall be issued without leave first granted in open court, (by the court in which such action or suit may have been brought or instituted,) upon motion to be made after notice in writing given to the person or persons sought to be

Execution may issue against any person who was a proprietor.

charged, nor after the expiration of three years next after any such person or persons shall have ceased to be a
81 proprietor or proprietors of the said company: *Provided also*, That it shall not be lawful for the said company, or any person or persons on behalf of the said company, in any manner to stipulate, contract, or agree with any person or persons to limit or restrict the liability of the proprietors of the said company, or any of them, or to make any special contract or agreement in relation to the extent of the liability of the proprietors of the said company, or any of them, other than or differing from such contracts or agreements as are usually made between general partners in trade and others contracting with them, except so far as such contracts, and the remedies for enforcing the performance of the same, are affected by the provisions of this act, and the true intent and meaning thereof.

Liability of proprietors not to be restricted.

Decrees against the chairman, &c., to have effect against the company.

VII. *And be it further enacted*, That all and every judgment or judgments, decree or decrees, order or orders, made or pronounced in any action, suit, or proceeding in any court of law or equity against the chairman or deputy chairman for the time being, or any director of the said company, shall have the like effect and operation upon and against the property and funds of the said company, and upon and against the persons and property of every proprietor thereof, as if all the proprietors of such company were parties before the court to and in such action, suit, or proceeding; and it shall be lawful for any court in which such judgment, order, or decree shall have been laid, to cause such judgment, order, or decree to be enforced against all and every or any proprietor of such company in like manner as if all the proprietors of such company were parties before such court to and in such action, suit, or proceeding.

Individual proprietors may sue the chairman, who may bring actions or suits against the proprietors.

VIII. *And be it further enacted*, That any individual proprietor or proprietors of the said company, or person or persons who shall have been a proprietor or proprietors of the said company, and have disposed of or parted with his, her, or their share or shares and interest therein, and who shall claim payment of any dividends of the funds or profits of the said company due and payable to him, her, or them, (and not also disposed of or parted with along with such share or shares,) or any other right or interest against
82 the said company generally, shall or lawfully may commence and carry on in any court of equity any suit or other proceeding against the chairman or deputy chairman of the said company for the time being; and such chairman, deputy chairman, or any one of the directors for the time being of the said company, may commence and carry on in his own name any action at law, or suit, or other proceeding in any court of equity against any individual proprietor or proprietors of the said company against whom the said company generally may have any claim or demand; and all such actions, suits, and other proceedings shall be as valid and effectual as if all the proprietors of the said company had been made parties; and every decree and order made therein shall be binding for or against the said company and all the proprietors thereof; and no abatement

shall arise from the death, resignation, or removal, or any other act of any such chairman, deputy chairman, or director, pending the suit: *Provided always*, That in case, for the purpose of discovery, any person or persons, whether a proprietor or proprietors of the said company, or not, having claims or demands against the said company, shall be minded and desirous to include any other proprietor or proprietors of the said company, besides the chairman, deputy chairman, or director, as a defendant or defendants in any bill or other proceeding in any court of equity, it shall be lawful for him or them so to do, anything in this act contained to the contrary notwithstanding.

One action only to be brought upon one cause against the company.

IX. *Provided always, and be it further enacted*, That no person or persons, bodies politic or corporate, having or claiming to have any demand upon or against the said company, shall, when the same has been so determined as to have been pleadable in bar against such person or persons, bodies politic or corporate, bring more than one action in respect of such demand; and the proceedings in any action against the chairman, deputy chairman, or any one of the directors or proprietors or partners for the time being of the said company, under the authority of this act, if so determined, may be pleaded in bar of any action or actions for the same cause against any other chairman, deputy
83 chairman, or director or proprietor or partner in the said company.

Nor by the company.

X. *And be it further enacted*, That not more than one action shall be brought by the said company, or any person on their behalf, for the same cause of action, against any person or persons whomsoever.

Making false declaration a misdemeanor.

XI. *And be it further enacted*, That every person who shall willfully and corruptly make and subscribe any declaration required to be made and subscribed under the authority of this act, knowing the same to be false in any material particular, shall be deemed guilty of a misdemeanour, and shall be punishable accordingly.

Act to be at all times valid.

XII. *And be it further enacted*, That all the provisions contained in this act shall extend and be construed to extend to the said company or partnership called "The Liverpool Fire and Life Insurance Company," at all times during the continuance of the same, whether the same from time to time hath been, or be now, or shall be hereafter, composed of all or some of the persons who were the original proprietors or partners thereof, or of all or some of those persons, together with some other persons, or shall be composed altogether of persons who were not original proprietors or partners of the same.

Company not incorporated by this act.

XIII. *Provided always, and be it further enacted*, That nothing herein contained shall extend, or be deemed, construed, or taken to extend, to incorporate the said company, or to relieve or discharge the said company, or any of the proprietors thereof or subscribers thereto, from any responsibility, duties, contracts, or obligations whatsoever which by law they now are or at any time hereafter may be subject or liable to, either between the said company and others, or between the individual proprietors of the said company,

or any of them, and others, or amongst themselves, or in any manner whatsoever, except so far as the same is affected by the provisions of this act, and the true intent and meaning thereof.

Public act.

XIV. *And be it further enacted*, That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others.

84 *The schedule referred to by the foregoing act.*

Memorial of the names of the chairman, deputy chairman, directors, and proprietors of "The Liverpool Fire and Life Insurance Company," on the day of , one thousand eight hundred and , enrolled pursuant to an act passed [here insert the date and title of this act.]

C. D. chairman.
A. B. }
B. A. } deputy chairmen.
E. F. }
G. H. } directors.
I. K. }
L. M. }
N. O. } proprietors.
P. Q. }

I, A. B., of , in the county of [description], do hereby solemnly and sincerely declare that the above-written memorial doth contain the names of the chairman, deputy chairmen, directors, and all the present proprietors of the said company, as the same appear in the book of the said company; and I make this solemn declaration, conscientiously believing the same to be true, and in pursuance of the provisions of the statute in that case made and provided.

(Signed) A. B.

Solemnly declared, [insert affirmation.]

Memorial of the names of the chairman, deputy chairman, and directors of "The Liverpool Fire and Life Insurance Company," to be enrolled in pursuance of an act passed [here insert the date and title of this act.]

C. D. chairman.

A. B., B. A. deputy chairmen.

E. F., &c., [here insert names of the directors], directors.

I, A. B., of , in the county of [description], do hereby solemnly and sincerely declare that the above-written memorial
85 doth contain the names of the chairman, deputy chairmen, and directors of the said company; and that the above-named E. F. [here insert the names of the directors] were respectively elected directors of the said company on the, [here insert the dates of their respective appointments,] and that the above-named C. D. was on the day of elected chairman of the said company for the year [or the remainder of the year, as the case may be] commencing on the day of and ending on the day of

A. B. sworn, [insert jurat.]

A memorial of the name or names of the person or persons who hath or have ceased or discontinued to hold any share or shares in "The Liver-

pool Fire and Life Insurance Company," since the day of one thousand eight hundred and , being the date of the memorial last registered respecting the said premises and the said company.

G. H., of

I, A. B., of , in the county of [description], do hereby solemnly and sincerely declare that the above-written memorial doth contain the name or names of the person or persons who hath or have ceased or discontinued to hold any share or shares in the above-named company since the day of , one thousand eight hundred and , as the same appears in the books of the said company; and I make this solemn declaration, conscientiously believing the same to be true, and in pursuance of the provisions of the statute in that case made and provided.

(Signed) A. B.

Solemnly declared, [insert affirmation.]

86 A memorial of the name or names of the person or persons having become a proprietor or partner in, or possessed of or entitled to any share or shares in, "The Liverpool Fire and Life Insurance Company," since the day of , one thousand eight hundred and , being the date of the memorial last registered respecting the said premises and the said company.

I. K. , holding shares.

I, A. B. of , in the county of [description], do hereby solemnly and sincerely declare that the above-written memorial doth contain the name or names of the person or persons who hath or have become a proprietor or partner in, or possessed of or entitled to any share or shares in, the above-named company since the day of , one thousand eight hundred and , as the same appears in the books of the said company; and I make this solemn declaration, conscientiously believing the same to be true, and in pursuance of the provisions of the statute in that case made and provided.

(Signed) A. B.

Solemnly declared, [insert affirmation.]

87 Cap. CCLXVIII.

An act to change the name of the Liverpool Fire and Life Insurance Company, and for other purposes relating thereto.

[22nd July, 1847.]

Preamble.

Whereas, in the year 1836, an association called "The Liverpool Fire and Life Insurance Company" was established for the purpose of carrying on the business of fire and life insurance, and all matters connected therewith. And whereas an act was passed in the session of Parliament held in the 6th and 7th years of the reign of his late Majesty King William IV, intituled "An act to enable the Liverpool Fire and Life Insurance Company to sue and be sued in the name of the chairman, deputy chairman, or any one of the directors, and for other purposes." And whereas the said

company have lately established an office of business in London, and it is expedient that the name or style of the said company should be altered, and that the provisions of the said act should be amended and enlarged, but the objects aforesaid cannot be effected without the authority of Parliament: May it therefore please your Majesty that it be enacted,

And be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, That the company hitherto called "The Liverpool Fire and Life Insurance Company" shall, from the date of the passing of this present act, be called by the name of "The Liverpool and London Fire and Life Insurance Company:" *Provided, nevertheless,* That the company shall, under the name and style of "The Liverpool and London Fire and Life Insurance Company," except as herein otherwise provided, continue subject in all respects to the same liabilities, and possess the same privileges and rights, and be governed by the same rules and regulations, as those to which it would have been subject, and which it would have possessed, and by which it would have been governed, in case this act had not been passed. And all contracts and engagements entered into and subsisting between the said company, and any bodies politic or corporate, and any other person or persons whomsoever, prior to the passing of this act, shall and may be proceeded on and enforced in the same manner, to all intents and purposes, as if at the time of the making such contracts or engagements the said company had been called the Liverpool and London Fire and Life Insurance Company.

1. Name to be changed.

88

2. Powers granted to company.

And be it enacted, That it shall be lawful for the said company to sell and to purchase capital sums, payable after the lapse of a definite interval, and also to sell and purchase interests, depending on contingencies, which are unconnected with the duration of a life or lives. And also at any time or times to move and enter into and carry out a contract or contracts for the undertaking, paying, and performing all or any part of the insurances or assurances, annuities and engagements, of another company or society: *Provided always,* That no such contract or contracts shall alter, diminish, or in any way prejudice the rights and interests of the holders, if any, of the existing policies of the company.

3. Policies granted by company may be substituted for others.

And be it enacted, That when and so often as any such contract as aforesaid shall have been effected, in case any holder of a policy or security granted or issued by any other company or society, with which such contract shall have been made, shall be a corporation, tenant for life, married woman, infant, lunatic, or idiot, trustee, executor, or administrator, it shall be lawful for such holder, not being an infant, lunatic, or idiot, if such holder shall think fit, but not otherwise, and in case of such holder being an infant, lunatic, or idiot, then for his guardian or guardians, committee or committees, in his or their discretion, to surrender up any such policy or security to the directors of the company, or such person as they shall authorize to receive the

same, for the purpose of being cancelled, and to accept
89 in lieu thereof a policy of the company of equivalent value to the policy surrendered.

4. Officers empowered to make affidavits on behalf of company.

And be it enacted, That in every case where an affidavit, oath, or solemn declaration may be required on behalf of the said company, the same may be taken or made by the secretary or principal accountant for the time being of the said company.

5. Repealing provision in recited act as to enrolment of names of directors and proprietors.

And be it enacted, That so much of the said recited act as enacts that when any new chairman or deputy chairman, or any new director or directors, shall be elected, or any transfer of any share or shares of any proprietor of the said company shall be made, then the directors for the time being of the said company shall cause a memorial thereof to be enrolled upon solemn declaration in the high court of chancery, within three calendar months afterwards, in the form or to the effect expressed in the schedule of the said act, be repealed, and the same is hereby repealed accordingly.

6. Names of directors and proprietors to be enrolled.

And be it enacted, That from and after the passing of this act, the directors for the time being of the said company shall, at the expiration of every three calendar months, cause a memorial upon solemn declaration in the form or to the effect expressed, in the schedule to this act, to be enrolled in the high court of chancery, of the names of the several persons for the time being chairman and deputy chairman and directors respectively of the said company, and also the names of the several persons at the time being proprietors in the said company.

7. Act not to extend to incorporate company.

Provided always, and be it enacted, That nothing herein contained shall extend to incorporate the company, or to relieve or discharge the company, or any of the proprietors thereof, from any responsibility, duty, contract, or obligation whatsoever, to which by law they are now, or at any time hereafter may be, subject or liable, either as between such company and other parties, or as between the company and any of the individual proprietors thereof and others, or as between themselves, in any manner whatsoever.

8. Interpretation of the act.

And be it enacted, That in this act the following words and expressions shall have the several meanings hereby assigned to them, unless there shall be something in the subject or context repugnant to such construction,
90 that is to say: Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Words importing the masculine gender shall include females.

The expression "The Company" shall mean the said Liverpool Fire and Life Insurance Company, hereby directed to be called "The Liverpool and London Fire and Life Insurance Company."

9. Public act.

And be it enacted, That this act shall be deemed to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others.

The schedule referred to in the foregoing act.

Memorial of the names of the chairman, deputy chairman, directors, and proprietors of "The Liverpool and London Fire and Life Insurance Company," on the day of , one thousand eight hundred and , enrolled pursuant to an act passed, [here insert the date and title of this act.]

C. D.	chairman.	Distinguishing the chairman, deputy chairman, and directors of the several boards of the company.
A. B.	deputy chairman.	
B. A.		
E. F.	directors.	
G. H.		
I. K.		
L. M.	proprietors.	
N. O.		
P. Q.		

I, A. B., of , in the county of [description] do solemnly and sincerely declare that the above-written memorial doth contain the names of the chairman, deputy chairman, directors, and all the present proprietors of the said company, as the same appear in the books of the said company, and I make this solemn declaration, conscientiously believing the same to be true, and in pursuanec of the provisions of the statute in that case made and provided.

(Signed) A. B.

Solemnly declared, [insert affirmation.]

91 *The act of Parliament.—Anno vicesimo septimo & vicesimo octavo Victoræ Reginæ.*

Cap. CXVI.

An act to confirm an agreement for the amalgamation of the Globe Insurance Company with the Liverpool and London Fire and Life Insurance Company, and to alter the name of the last-mentioned company, and for other purposes.

[23d June, 1864.]

Deed of settlement, dated 2d June, 1803.

Whereas the Globe Insurance Company was formed by a deed of settlement bearing date the second day of June, one thousand eight hundred and three, for the purpose of carrying on the business of life insurance and fire insurance, and the constitution and objects or business and governing rules and regulations of the same company are set forth and contained in the said original deed of settlement thereof, and in the next-mentioned local and personal acts, that is to say: An act of the forty-seventh year of the reign of his late Majesty King George the Third, intituled:

47 G., 3 sess. 1, c. xxx.

"An act to enable the Globe Insurance Company to sue in the name of their treasurer, and to enroll annuities;" an

47 G., 3 sess. 2, c. lxxxvii.

act of the same year and reign, entituled "An act to ex-

plain an act of the forty-seventh year of his present Majesty for enabling the Globe Insurance Company to sue in the name of their treasurer, and to enroll annuities;" an act of the forty-ninth year of his late Majesty, intituled
92 "An act to alter and explain two acts to enable the Globe Insurance Company to sue in the name of their treasurer, and to enroll annuities;" an act of the eighth year of the reign of her present Majesty, intituled "An act to enable the Globe Insurance Company to alter and amend some of the provisions of their deed of settlement;" and an act of the twenty-second year of the reign of her present Majesty, intituled "An act to enable the Globe Insurance Company to alter and amend some of the provisions of their deed of settlement, and to confer further powers on the company;" and by the last-mentioned act the said company was empowered to amalgamate with any other company carrying on the like business. And whereas the capital of the said company is one million of pounds, divided into ten thousand shares of one hundred pounds each, all of which have been subscribed for and paid up. And whereas the Liverpool and London Fire and Life Insurance Company was formed under the name of "The Liverpool Fire and Life Insurance Company," by a deed of settlement bearing date the twenty-first day of May, one thousand eight hundred and thirty-six, for the purpose of carrying on the business of fire insurance and life insurance, and the constitution and objects or business, and the governing rules and regulations of the same company are set forth and contained in the said original deed of settlement thereof, and in two supplemental deeds of settlement bearing date respectively the twenty-eighth day of February, one thousand eight hundred and fifty-one, and the seventh day of January, one thousand eight hundred and sixty-three, and in the two next-mentioned local and personal acts, that is to say: An act of the seventh year of the reign of his late Majesty King William the Fourth, intituled "An act to enable the Liverpool Fire and Life Insurance Company to sue and be sued in the name of the chairman, deputy chairman, or any one of the directors of the said company, and for other purposes;" and an act of the eleventh year of the reign of her present Majesty, intituled "An act to change the name of the Liverpool Fire and Life Insurance Company, and for other purposes relating thereto," and by the last-mentioned act the said company was empowered to enter
93 into any contract to undertake the business and engagements of another company or society. And whereas the original nominal capital of the last-mentioned company was two million pounds, divided into one hundred thousand shares of twenty pounds each, and by the original deed of settlement of the same company the company was empowered to diminish or increase its capital as therein mentioned. And whereas, at a general meeting of proprietors of the Liverpool and London Fire and Life Insurance Company, held on the seventeenth day of February, one thousand eight hundred and fifty-nine, it was, among other things, resolved that the capital of the company should

49 G., 3, c. cxxiii.

8 & 9 Vict., c. xxix.

21 & 22 Vict., c. lx.

Deed of settlement, dated 21st May, 1836.

& 7 W. 4, c. xix.

10 & 11 Vict., c. cclxviii.

be, and was thereby, converted into stock, and that in lieu of the shares then held by the several proprietors the same proportion of stock should be issued to and held by them, viz., for every fifty shares on which two pounds each had been paid or was then due, one hundred pounds of stock should be substituted, and any greater or less number of shares should be converted into a corresponding amount of stock, and that the alterations in the company's deed of settlement necessary to carry out those resolutions should be made, and the said resolutions were confirmed at a special general meeting of the proprietors of the Liverpool and London Fire and Life Insurance Company, held on the eighth day of March, one thousand eight hundred and fifty-nine. And whereas, since the passing of the said resolutions the said capital of the Liverpool and London Fire and Life Insurance Company has not been treated and dealt with otherwise than as paid-up capital stock, at the rate of two pounds of stock for each share of twenty pounds. And whereas, by a resolution passed at a special general meeting of proprietors of the Liverpool and London Fire and Life Insurance Company, held on the tenth day of December, one thousand eight hundred and sixty-two, the directors of that company were authorized to carry into effect an arrangement for the amalgamation of that company with the Globe Insurance Company, on the terms contained in the agreement which is annexed to this act as a first schedule thereto, and which is hereinafter in this act termed the "amalgamation agreement;" and at the same meeting, in order, amongst other things, to carry out the said
94 resolutions of February and March, one thousand eight hundred and fifty-nine, it was resolved that as from the eighth day of March, one thousand eight hundred and fifty-nine, there should be substituted for and in lieu of the third clause of the original deed of settlement of the company the next following provision, that is to say: That the capital of the said company shall be two million pounds sterling, issuable as stock, but such capital may be increased or decreased as expressed in the supplemental deed of settlement submitted to this meeting, (meaning thereby the said supplemental deed of the seventh day of January, one thousand eight hundred and sixty-three;) and the allotment and issue of so much of the said capital of two million pounds as, together with the amount thereof already issued, will make up the amount of five hundred thousand pounds or one equal fourth part of the said capital, shall exclusively appertain to and be made by the directors for the time being at their discretion, and the allotment and issue of the sum of one million five hundred thousand pounds, being the remainder of the said capital, shall also appertain to and be made by the directors for the time being, under the authority, nevertheless, of a resolution of some general meeting, either annual or special, of the company; and at the same meeting it was resolved that the total amount payable in respect of calls not made on so much of the capital of the company as theretofore or then consisted of shares should be and was thereby surrendered and re-

stored to the company by the several proprietors, to the intent that the same might become and be dealt with as part of the unissued capital stock of the company, and that expectant dividends on all or any part of the issued capital or subsisting stock for the time being of the company might be converted at any time, or from time to time, into perpetual annuities, (such annuities not altogether exceeding sixty thousand pounds a year,) to be granted by the directors for the time being on behalf of the company to the proprietors, the dividends on whose stock were proposed or about to be so converted in consideration of the transfer by them respectively of such stock to such persons as the directors for the time being might appoint, and upon such other terms and subject to such rules and regu-
95 lations as such directors should deem expedient, but that no such conversion of the dividends on any stock should be made without the consent of the registered proprietor for the time being of the same stock. And whereas, at a special general meeting of proprietors of the Globe Insurance Company, held on the twelfth day of December, one thousand eight hundred and sixty-two, it was unanimously resolved that the said company did approve of the contract or agreement then submitted to the said meeting, for the union or amalgamation of the said company with the Liverpool and London Fire and Life Insurance Company, (being a proposed contract, to the effect of the amalgamation agreement,) and that the said Globe Insurance Company did delegate to their directors full power to carry into effect the said arrangement, and to do all such other acts as might be fit and proper to carry into effect the said union or amalgamation. And whereas, by the amalgamation agreement it is provided that investments and securities to the value of one million pounds sterling, being the amount of the paid-up capital of the Globe Insurance Company, should, on or before the first day of June, one thousand eight hundred and sixty-three, be transferred by the directors and trustees of the Globe Insurance Company, either out of their own funds or out of the funds to be acquired by them from exchanges of investments and securities with the Liverpool and London company into the names of five trustees, to be appointed as therein mentioned; and that the last-mentioned investments and securities, and any investments and securities to be substituted for the same, or so much thereof as should not have been applied or transferred in manner thereinafter directed, should be called "the Globe six per cent. perpetual annuity guarantee fund," and that the trustees should hold the last-mentioned fund, and the income thereof, subject to the thereinmentioned lien (if any) thereon upon the trusts in the amalgamation agreement set forth. And whereas the said Globe six per cent. perpetual annuity guarantee fund is hereinafter in this act termed "The guarantee fund." And whereas it is expedient that the amalgamation agreement, and also the conversion of the paid-up capital of the Liverpool and
96 London Fire and Life Insurance Company into stock, not liable to further calls by the company, or the di-

rectors thereof, and the issue of the remainder of the same company's capital as stock, should be respectively confirmed, that the name of the same company should be changed, and that facilities should be afforded for the execution of the amalgamation agreement; but such several purposes cannot be effected without the authority of Parliament:

May it therefore please your Majesty that it be enacted; and be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same as follows, (that is to say:)

Short title.

1. This act may be cited for all purposes as "The Liverpool and London and Globe Insurance Company's act, 1864."

Agreement for amalgamation of companies confirmed.

2. Subject to the provisions of this act, the "amalgamation agreement" shall be, and the same is, by this act confirmed, and shall, according to the provisions thereof, be binding and obligatory upon the Globe Insurance Company and upon the Liverpool and London Fire and Life Insurance Company, as well by the original as the future name or style thereof, and upon all persons and corporations having been, being, and becoming entitled to or interested in the respective capitals, stocks, funds, property, credits, policies, and other contracts and engagements of the same two companies respectively; and the Globe Insurance Company, and the directors thereof on their behalf, and the Liverpool and London Fire and Life Insurance Company, and the directors thereof on their behalf, and the respective trustees of the said companies, and all other necessary parties, are hereby authorized, from time to time, to make and execute, do and perform, and cause to be made, executed, done, and performed, all such deeds, transfers, grants, acts, matters, and things as shall be necessary, proper, or expedient for carrying into execution, completing, and effectuating the amalgamation agreement according to the true intent and meaning thereof, and of this act: *Provided always*, That the first day of January, one thousand eight hundred
97 and sixty-five, shall be substituted for the first day of June, one thousand eight hundred and sixty-three, as the day on or before which the guarantee fund is to be transferred into the names of five trustees, according to the said recited provisions of the amalgamation agreement.

Name of Liverpool and London company changed.

3. The name or style of the Liverpool and London Fire and Life Insurance Company shall, on and from the day of the passing of this act, be changed into and thenceforth be "The Liverpool and London and Globe Insurance Company;" and all acts of Parliament, royal charters, contracts, and engagements, and all policies, agreements, bonds, deeds, assurances, and other instruments whatsoever, wherein the Liverpool and London Fire and Life Insurance Company are named or referred to, by or with reference to their original or present name, shall be read and have effect as if they were named or referred to therein by or with reference to their new name authorized by this act; and subject to the amalgamation agreement and this act, all rights of action,

or suit and other rights and privileges possessed or enforceable by or on behalf of or against the Liverpool and London Fire and Life Insurance Company at the time of the passing of this act, shall be deemed to be rights and privileges possessed or enforceable by or on behalf of or against the Liverpool and London and Globe Insurance Company; and all contracts, engagements, rights of action and suit, and other rights and privileges, shall and may be proceeded upon and enforced accordingly; and the said Liverpool and London and Globe Insurance Company are hereinafter throughout this act called "The Company."

Executors and trustees may exercise option given to shareholders in the Globe company.

4. All discretions and options expressed to be given by the amalgamation agreement to proprietors or shareholders of or in the Globe Insurance Company, to exchange shares or stock for perpetual annuities, and all other discretions by the same agreement given to the said proprietors or shareholders, shall be exerciseable by such of the same proprietors or shareholders as hold or shall hold their shares or stock in the charter of executors, or administra-
98 tors, or trustees, or subject to any trust, equity, charge, or lien, without the necessity of obtaining the consent or concurrence of any other person or persons, and in like manner and as effectually as if they were respectively entitled, for their own respective absolute benefits, to the shares or stock held by them respectively.

Option for Globe proprietors to take annuities in exchange for Globe capital without taking Liverpool and London stock.

5. Any proprietor, whether a trustee or not, of capital in the Globe Insurance Company, entitled under article five of the amalgamation agreement to receive, in lieu of each share of one hundred pounds in that capital held by him, twenty pounds stock of the company, and who, under article six of the amalgamation agreement, if he were the holder for his own benefit of that stock in the company, would be entitled to exchange every twenty pounds of that stock for a perpetual annuity of six pounds, on giving, within two months after the passing of this act, or within such extended time as by article six of the amalgamation agreement is provided for, to the secretary of the company notice in writing to that effect, may exchange every one hundred pounds of capital in the Globe Insurance Company held by him for a perpetual annuity of six pounds; and in every such case the company, in lieu of issuing to such respective proprietor the amount of stock of the company which he would have been entitled to take as aforesaid, shall issue the like amount of stock of the company to trustees for the company, in whom shall also be vested all stock of the company exchanged for perpetual annuities under the amalgamation agreement; and all the stock so issued to or invested in such trustees shall be held by them in trust for the company as the consideration for the said annuities, and as part of the general assets of the company, and be disposable by the company accordingly.

Provisions of the amalgamation agreement to apply to annuities under this act.

6. The provisions of the amalgamation agreement with respect to the perpetual annuities of six pounds shall apply to annuities taken under the provisions of this act in exchange for capital in the Globe Insurance Company, in like manner, mutatis mutandis, as those provisions apply to annuities taken in exchange for stock in the company.

Liverpool and London stock or annuity taken by trustee for Globe stock, to be subject to same trusts, &c.

99 7. Where any capital in the Globe Insurance Company is held by any person being a trustee thereof, the stock in the company, or, as the case may be, the perpetual six pounds annuity taken by him, either immediately or mediately, instead of, or in exchange for, the same, shall be subject to the same or the like trusts, powers, and provisions as the capital in the Globe Insurance Company, instead of, or in exchange for, which the stock in the company or the annuity is taken; and such stock, and the dividends and profits thereof, or, as the case may be, such perpetual annuity, shall, with such share of the residuary assets of the Globe Insurance Company as he may be entitled to under the amalgamation agreement and this act, represent that capital in the Globe Insurance Company and the profits thereof, and be held, continue to be held, enjoyed, dealt with, and disposed of accordingly.

Confirmation of conversion of company's capital into stock.

8. The original capital of the company, of two million pounds, shall be, and be deemed to have been as on and from the eighth day of March, one thousand eight hundred and fifty-nine, issued and issuable and transferable as stock, and not as shares; and the amount paid to, and retained by, the company, upon any shares issued before that day shall be stock without liability to further calls on such shares by the company or the directors thereof, and the residue of the said capital of two million pounds shall be issuable and transferable only as stock.

Stock to confer corresponding qualifications and liabilities as shares.

9. Every two pounds of capital stock of the company shall confer and impose upon the holder thereof the same qualifications, powers, rights, and liabilities, (except liability to calls by the company or the directors thereof,) as under the said deeds and acts of, and relating to the company, would respectively have been conferred or imposed by the holding of a share of the nominal amount of twenty pounds in the original capital of the company, if such capital had not been converted into stock.

Perpetual annuities may be granted by the company.

10. The directors of the company may, on behalf of the company, grant such perpetual annuities as by the amalgamation agreement and this act respectively, are pro-
100 vided to be granted, in manner and with the effect in and by the same agreement and this act respectively expressed and intended.

Liabilities of annuitants.

11. No person accepting or holding a perpetual annuity, granted in pursuance of the amalgamation agreement and this act respectively, shall be deemed, by reason thereof, to have acquired any of the rights, or become subject to any of the liabilities, of a shareholder in the company.

Memorial of the first trustees of the Globe six per cent. perpetual annuity fund to be enrolled.

12. A memorial of the names and places of abode or business of the persons being or becoming the first or original trustees of the guarantee fund, may be enrolled in the high court of chancery, and each person so named and described in such memorial shall be a trustee of the guarantee fund until he shall die, or shall cease to be such trustee, according to the provisions of the amalgamation agreement, or a memorial shall be enrolled, in manner hereinafter provided, of the appointment of a new trustee in his place.

Memorial of appointment of new trustee of guarantee fund to be enrolled.

13. When and so often as any trustee of the guarantee fund shall be appointed according to the provisions of the amalgamation agreement, a memorial of the name and place of abode or business of such new trustee, specifying in whose place he shall have been appointed, may be enrolled in the high court of chancery, and every person so named and described in such memorial shall be a trustee of the guarantee fund until he shall die or shall cease to be such trustee, according to the provisions of the amalgamation agreement, or a memorial shall be enrolled, in manner herein provided, of the appointment of a new trustee in his place.

Transfer of trust property, &c., upon enrollment of a new trustee.

14. Every new trustee, a memorial of whose name and place of abode or business shall be enrolled as aforesaid, shall, from the time of the enrollment of such memorial, represent the deceased, retiring, or displaced trustee, in whose place he shall have been appointed, to all intents and purposes whatsoever, and accordingly all real and personal estate and effects, choses in action, rights, powers, discretions or authorities, claims and demands, whatsoever, which would have been vested and
101 exerciseable and enforceable, either solely or jointly, with any other person or persons, in and by such deceased, retiring, or displaced trustee, in his capacity of trustee of the guarantee fund, had he been a continuing trustee thereof, shall, by the mere force and effect of the enrollment of such memorial as last aforesaid, vest in and be exerciseable and enforceable by such new trustee for the like estate and interest, and in like manner, and as effectually in all respects as the same respectively would or might have been vested in and exerciseable and enforceable by such deceased, retiring, or displaced trustee, had he been a continuing trustee of the guarantee fund.

Indemnity to persons dealing with displaced trustee before enrollment of appointment of his successor.

15. No person paying any money or transferring any property to or otherwise dealing with the trustees for the time being of the guarantee fund, jointly with any person or persons who, being named in any such enrolled memorial as a trustee or trustees of the guarantee fund shall have ceased to be such trustee or trustees, but of the appointment of a trustee or trustees, in whose place no memorial shall have been enrolled as aforesaid, shall be accountable for such money or property, or liable in respect of such dealing further or otherwise than he would have been if such payment, transfer, or other dealing had been made exclusively to or with the trustees for the time being of the guarantee fund.

Trustees not to be personally liable on covenants.

16. No trustee of the guarantee fund, by whom, as such trustee, any covenant shall be entered into for title or for the production of title deeds, or otherwise, in respect of or relating to any real or personal estate, annuity, or property, which shall form part of the guarantee fund, or of or upon which any mortgage, security, or charge shall be made for the benefit of the person interested in the guarantee fund, or by whom, as such trustee, any other covenant or engagement shall be entered into with any person or persons other than the company or the persons for whom he is or shall be

trustee, or some person or persons on their behalf, shall be liable for any breach of any such covenant, but the company only shall be bound thereby and shall be liable
102 to be sued in respect of any such breach; and in all cases in which the benefit or obligation of any such covenant would have run with the title to any land or hereditaments, or the title to, or possession of, any title deeds or other property, if the same had been entered into by such trustees in case they had been personally bound thereby, the benefit or obligation (as the case may be) of such covenant shall still run with such lands, hereditaments, title deeds, or property, so as to bind assignees as well as the company, but not so as personally to bind any future trustee of the guarantee fund.

Receipts by major part of trustees to be good discharges.

17. Every receipt in writing which shall be given by the trustees of the guarantee fund, or by four of them, shall be an effectual discharge for the money, funds, or other property thereby acknowledged to have been received or transferred, and from all liability by reason of the loss, misapplication, or non-application of the same money, funds, and property, or any part thereof.

Form of memorial of trustees.

18. The first memorial to be enrolled pursuant to this act shall be in the form set forth in the second schedule to this act, or to the like effect, and each subsequent memorial to be enrolled pursuant to this act shall be in the form set forth in the third schedule to this act, or to the like effect, and every such memorial shall, upon or before the enrollment thereof, respectively, be verified by a declaration to be made pursuant to the act of the sixth year of the reign of his late Majesty King William the Fourth, chapter sixty-two, by the secretary for the time being, or one of the clerks for the time being, of the company, before a commissioner appointed to administer oaths in the high court of chancery.

Office copy of memorial to be evidence.

19. An office copy of the enrollment, or every memorial to be enrolled, pursuant to this act, shall be received in evidence on all occasions as proof of the contents of such memorial.

Stamp duty on memorial.

20. There shall be raised and levied for the use of her Majesty, her heirs and successors, the stamp duties following, that is to say: For and upon the first memorial which shall be enrolled in pursuance of this act the sum of
103 one shilling, and for and in respect of every subsequent memorial which shall be enrolled in pursuance of this act, the sum of five pounds, which duties shall be in lieu of stamp duties which would have been payable upon the deeds of appointment, conveyance, assignment, or transfer, surrenders, admittances, and other deeds, instruments, and documents which, in case this act were not passed, would or might have been executed from time to time on the appointment of a new trustee or trustees of the guarantee fund therein referred to.

Duties to be subject to general stamp laws.

21. The duties by this act granted shall be denominated and deemed to be stamp duties, and shall be under the care and management of the commissioners of inland revenue for the time being, and all powers, provisions, clauses, regulations and directions, fines and penalties, contained in and imposed by the several acts of Parliament relating to the

duties of the same kind or description in force at the time of the passing of this act shall respectively be of full force and effect with respect to the duties by this act granted, so far as the same are or may be applicable, as fully and effectually to all intents and purposes as if the same had been herein repeated and specially enacted with reference to the duties by this act granted.

Act not to confer limited liability on the company or alter its constitution, except as provided to the contrary.

22. Nothing in this act contained shall extend to incorporate the company or to confer limited liability on the holders for the time being of the stock thereof, or to alter, vary, or repeal any of the subsisting provisions of the hereinbefore mentioned deeds and acts of Parliament of and relating to the company, or any of them, except so far as the same respectively are inconsistent with or repugnant to this act.

The directors and trustees of the Globe to transfer securities in pursuance of the agreement, and collect and administer the remaining assets of the Globe.

23. The directors and trustees of the Globe Insurance Company are hereby authorized, after transferring and paying to the company, or to the trustees thereof, and to the trustees of the guarantee fund respectively, such securities, moneys, and property as ought to be transferred and paid to them respectively in pursuance of the amalgamation agreement, to call in, collect, sell, and convert into money the re-

104 maining property, credits, and assets of the Globe Insurance Company, and generally to liquidate and wind up the affairs of that company, and, after paying and deducting out of the produce thereof all such debts and liabilities of the Globe Insurance Company as ought not, under the amalgamation agreement, to be paid or discharged by the company, and all the costs, charges, and expenses of and incident to the conduct, liquidation, and winding-up of the affairs of the Globe Insurance Company, to divide the ultimate surplus of the moneys produced by the residuary estate and assets of that company among the shareholders or proprietors thereof, or their respective executors, administrators, or assigns, rateably and in proportion to their respective shares in the capital of the Globe Insurance Company, subject, nevertheless, to all just deductions and allowances; and it is hereby declared that for the purposes aforesaid the said Globe Insurance Company shall continue to exist, (subject to the provisions of the amalgamation agreement and this act,) and the present shareholders or proprietors thereof, or their respective executors, administrators, or assigns, shall, as well after as before the exchange of their shares for stock of the company, or for perpetual annuities, as aforesaid, be deemed to have all the rights of shareholders or proprietors thereof in respect of the said residuary assets until the final liquidation and distribution of such assets, in the same manner as if no such exchange had been made; and the present directors of the said Globe Insurance Company, and the survivors of them, shall continue in office and have all the powers of directors of the same company until the final distribution of the residuary assets thereof; and when and so soon as all the assets and property of the said Globe Insurance Company shall have been disposed of and distributed according to the provisions of the amalgamation agreement and of this act, the same company shall be dissolved.

On distribution of residuary assets the Globe company to be dissolved.

Expenses of act.

24. The costs, charges, and expenses of obtaining this act shall be paid by the Liverpool and London Fire and Life Insurance Company.

105 *The first schedule referred to by the foregoing act.*

Preamble.

Articles of agreement made on the thirty-first day of December, one thousand eight hundred and sixty-two, between Sheffield Neave, William Dent, George Carr Glynn, and Fowler Newsam, esquires, four of the directors of and trustees for the society or partnership called the Globe Insurance Company, acting and contracting for and on behalf of the said company, of the first part, and James Aspinall Tobin, Charles Stewart Parker, and Harold Littledale, esquires, three of the directors of the society or partnership called the Liverpool and London Fire and Life Insurance Company, acting and contracting for and on behalf of the last-mentioned company, of the second part.

Whereas it has been represented, by or on behalf of the Globe Insurance Company, that the capital of that company is one million pounds, divided into ten thousand shares of one hundred pounds each, all of which have been subscribed for and paid up, and that the whole of the said capital is now invested in or upon certain investments or securities now standing in the names of the trustees of the same company, the particulars of which investments and securities appear by the books of the company, and that, in addition to the said capital so invested, the same company is possessed as part of its assets of other investments or securities set apart in the names of the trustees of the company to answer the liabilities of the company on its policies and contracts; and that the same company is also possessed of other investments, securities, and property to a large amount. And whereas it has been represented by and on behalf of the said Liverpool and London Fire and Life Insurance Company (which company is hereinafter called the Liverpool and London Company) that the original nominal capital of that company was two million pounds, divided into one hundred thousand shares of twenty pounds
106 each; that the total sum of one hundred and eighty-nine thousand two hundred and two pounds has been paid in respect to the capital of the said company, and has either been properly converted into stock, or in the books of the same company is treated and dealt with as stock; that so much of the difference between the said paid-up capital of one hundred and eighty-nine thousand two hundred and two pounds and the said nominal capital of two million pounds as it may be necessary to issue as shares or stock for the purpose of this agreement is now capable of being issued by the same company, or the directors thereof; or, if such capacity do not now exist, that the same can and shall forthwith be obtained; that the same company has power to increase its capital to any amount, and that the dividends paid to the shareholders or stockholders in the same company in respect of the profits of the four years ending on

the thirty-first day of December, one thousand eight hundred and sixty-two, have been at the average rate of thirty pounds per annum for every fifty shares of two pounds paid, or for each one hundred pounds stock: Now, the several persons parties hereto of the first part, acting for and on behalf of the board of directors of the Globe Insurance Company, and for and on behalf of that company, and in pursuance of resolutions duly passed at a meeting of the proprietors of the said company specially convened for the purpose, and at meetings of the directors of the company, do hereby agree with the several persons parties hereto of the second part, acting for and on behalf of the board of directors of the Liverpool and London company, and with that company, to the effect following; and the several persons parties hereto of the second part, acting for and on behalf of the board of directors of the Liverpool and London company, and for and on behalf of the last-mentioned company, and in pursuance of resolutions duly passed and confirmed at meetings of the proprietors of the company specially convened, for the purposes and at meetings of the directors of the company, do hereby agree with the several persons parties hereto of the first part, acting for and on behalf of the board of directors of the Globe Insurance Company, and with that company, to the effect following, that is to say:

107 1. The business of the Globe Insurance Company shall be transferred to and undertaken by the Liverpool and London company, and the Globe Insurance Company shall be united with the Liverpool and London company as from the twenty-ninth day of September, one thousand eight hundred and sixty-two. The Globe Insurance Company shall pay out of their own assets all debts and moneys due from them, all claims for their life policies, and for loss under fire policies, in respect of deaths, contingencies, and losses which occurred on or before the twenty-ninth day of September, one thousand eight hundred and sixty-two; and the Liverpool and London company shall perform, pay, and discharge, and give effect, to all the other contracts, debts, engagements, and arrangements of the Globe Insurance Company, whether entered into, incurred, or contracted before, on, or after that day, including those mentioned in the first schedule hereinunder written, and the pensions, of which a list is set forth in the second schedule hereinunder written. The business of the Globe to be transferred.

2. All premiums payable to the Globe Insurance Company in respect of their policies of insurance which shall have become due before the twenty-ninth day of September, one thousand eight hundred and sixty-two, shall be received by that company as a part of their assets. All premiums on policies of the same company, first due or payable on or after that day, shall belong to the Liverpool and London company. Premiums of Globe.

3. The profits from the thirty-first December, one thousand eight hundred and fifty-eight, which may hereafter become payable to holders of policies of assurance granted by the Globe Insurance Company, entitled to participate in Profits of Globe.

the profits of that company, shall be ascertained in the same manner, and be calculated on the same principles, as that now adopted by the Globe Insurance Company, the object and intent of the parties being, that the rights of the holders of said policies shall be preserved and maintained. A due proportion of the expenses of the Liverpool and London company, in carrying on their life business, shall be charged to or borne by the Globe policy-holders, such proportion to be in the ratio of receipts to charges on the whole
108 business; but such proportion shall not exceed the rate heretofore charged to or borne by Globe policy-holders.

Life liabilities of Globe.

4. The liabilities of the Globe Insurance Company, on its life policies, annuity, and endowment policies, which are to be adopted by the Liverpool and London company, shall be valued on the same principle and in the same manner in all respects as has heretofore been done for the purpose of ascertaining the proper amount of the calculated life insurance liability fund and of the annuity and endowment liability fund of the Globe Insurance Company, except the annuities and endowments granted by the Globe Insurance Company are to be valued according to the rate of interest, being three and a half per cent., and the table of mortality adopted by the Liverpool and London company in their annuity and endowment tables, and that the participating life policies are to be taken over on a valuation to be made thereof, on the same principles as heretofore in all respects by the Globe Insurance Company, as on the twenty-ninth September, one thousand eight hundred and sixty-two, for the purpose of ascertaining the profits in respect of such participating policies to that date. Investments and securities to the amount of the value of the liabilities of the Globe Insurance Company on the said life policies, annuity, and endowment policies, as so ascertained, shall be transferred by the directors and trustees of the Globe Insurance Company to the trustees of the Liverpool and London company, and shall be held by the last-mentioned company in trust as a separate fund (hereafter called "The Globe life policy, annuity, and endowment liability fund") to meet liabilities on such life policy, annuity, and endowment policies. A separate account shall be kept by the Liverpool and London company of the last-mentioned liabilities, and the aggregate amount in value of such of them as shall for the time being be a subsisting charge shall be calculated and ascertained at least once in every five years, strictly in accordance with the basis and mode of valuation now adopted by the Globe Insurance Company; and at the same time the in-
109 vestments and securities constituting the said Globe life policy, annuity, and endowment liability fund shall be valued, and from time to time, after the taking of such accounts and valuation, so much (if any) of the last-mentioned investments and securities as shall be in excess of the amount of the liabilities for which it is a security (such amount to be calculated and ascertained in manner aforesaid) shall be transferred to the account of the Liverpool and London company as part of their general assets, and

Globe life policy, annuity, and endowment liability fund.

from time to time, if, after taking the said accounts and valuations, it shall appear that the value of the securities and investments for the time being constituting the aforesaid Globe life policy, annuity, and endowment liability fund is less than the value of the liabilities for which the fund is a security, (such value to be ascertained in manner aforesaid,) the Liverpool and London company shall make good the deficiency by appropriating to the said trust fund a sufficient amount of securities or investments, which shall be vested in and be held by the trustees as part of and upon the trusts of the said Globe life policy endowment liability fund.

Amount of stock to be issued to Globe proprietors.

5. The Liverpool and London company shall issue to each proprietor of capital in the Globe Insurance Company, in lieu of each share of one hundred pounds in that capital held by him, twenty pounds stock of or in the Liverpool and London company, and shall, if necessary, increase their capital to a sufficient amount. No further call or instalment on such stock shall be payable. The holders of such stock shall be in all respects on an equal footing with and have the same rights as the present stockholders in the Liverpool and London company as from the twenty-ninth day of September last, and shall participate rateably with them in all payments made after that date on account of dividends or profits.

Perpetual annuities in lieu of stock may be claimed by Globe proprietors.

6. Any holder of stock in the Liverpool and London company, which shall be issued under the provisions of the last preceding clause in lieu of a share or shares in the Globe Insurance Company may, by giving within two months from the passing of the act of Parliament hereinafter mentioned, or within such extended time as hereafter provided for, to the secretary of the Liverpool and London company, notice in writing to that effect, exchange such stock for a perpetual annuity at the rate of thirty per centum per annum, that is to say, at the rate of six pounds per annum for every twenty pounds of such stock. Such annuity shall commence in computation from the twenty-ninth day of September, one thousand eight hundred and sixty-two, and be paid half-yearly to the grantees thereof, or their respective executors, administrators, or assigns, on each first day of June and first day of December thenceforth. The present board of directors of the Globe Insurance Company, in such exceptional cases as they may deem reasonable, may extend the time for giving such notice of exchange of stock for annuities to any day within four months from the passing of the said act of Parliament. Any dividends previously received in respect of stock so exchanged for an annuity shall be taken to be payments on account of such annuity. Any dividend paid by the Globe Insurance Company, since the twenty-ninth September, one thousand eight hundred and sixty-two, shall be taken as a payment by the Liverpool and London Insurance Company on account of any dividend or annuity which a shareholder in the Globe Insurance Company may, under this agreement, be entitled to receive from the Liverpool and London Insurance Company.

The Liverpool and London to pay perpetual annuities.

7. The Liverpool and London Company shall pay to each person who shall, under the provisions of the last preceding clause, exercise the option of taking an annuity in exchange for stock, and to his executors, administrators, and assigns, a perpetual annuity of six pounds per annum for every twenty pounds of stock of or in the Liverpool and London company, which may, in pursuance of this deed, have been issued to such person, and shall provide for the said perpetual annuities by means of the creation and the grant to trustees in perpetuity of a yearly sum or yearly sums equal to the aggregate amount of all such annuities. And the said trustees shall, at the request and at the expense of each person who shall exercise such option as aforesaid, his executors, administrators, and assigns, assign to him or

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them a proportion of the same yearly sum or sums equal to the separate perpetual annuity which he or they shall be entitled to respectively. The Liverpool and London company shall make and forever keep a register of the said perpetual annuities, in which shall be entered the names and descriptions of the persons for the time being entitled to the annuities, and the amount of the annuities held by them respectively.

Further deed of covenant by Liverpool and London company.

8. The directors of the Liverpool and London company shall execute such further deed of covenant, binding that company to pay the liabilities which, under the arrangement hereby made are to be paid and discharged by them, and to indemnify therefrom the said Globe six per cent. perpetual annuity fund, and the persons who may be entitled to the said annuities, as the Globe Insurance Company or their counsel shall reasonably require or advise.

As to stock issued by Liverpool and London company.

9. The stock to be issued in pursuance of the arrangement herein contained shall be treated as part of the consolidated capital or stock of the Liverpool and London company, and shall be transferred in the same way in all respects as stock of or in that company, and the annuities taken in exchange

Perpetual annuities may be transferred.

for any such stock may be transferred in any proportions not involving fractions of a pound, and not being less than one pound per annum, and in the same manner as stock of or in the Liverpool and London company; but no such transfer shall be made otherwise than by a deed in a form

Perpetual annuities to be paid in London.

approved of by the directors of the same company. The annuities shall be paid at the chief office of the Liverpool and London company in London, and shall be transferable, and the register of the holders thereof shall be kept at that office, and such register shall, on behalf of the trustees for the annuitants, be conclusive evidence of the title of the annuitants, and shall be open to the inspection of any annuitant and to the trustees for the said annuitants, without any expense, on production of reasonable evidence of his or

Certificates to be granted.

her being such annuitant. And the said Liverpool and London company shall, on the request of any annuitant, grant to him a certificate of his annuity. The title to an annuity shall not confer any of the rights or any of

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the liabilities of a share-holder in the Liverpool and London company.

Globe six per cent. perpetual annuity guarantee fund, appointment of trustees, &c.

10. Investments and securities to the value of one million pounds, being the amount of the paid-up capital of the Globe Insurance Company, shall, on or before the first day of June, one thousand eight hundred and sixty-three, be transferred by the directors and trustees of the Globe Insurance Company, either out of their own funds or out of funds to be acquired by them from exchanges of investments and securities with the Liverpool and London company, into the names of five trustees, of whom three shall be appointed by the present board of directors of the Globe Insurance Company, and two by the board of directors of the Liverpool and London company. One of the three trustees appointed by the directors of the Globe Insurance Company shall be a commercial man not holding or beneficially entitled to any share or stock in either of the companies, or to any annuity granted in exchange for stock as aforesaid; and such trustee is hereafter referred to as the "disinterested trustee." The last-mentioned investments and securities, and the investments and securities to be substituted for the same, or so much thereof as shall not have been applied or transferred in manner hereinafter directed, are hereinafter referred to as "The Globe six per cent. perpetual annuity guarantee fund," and the trustees shall hold the last-mentioned fund, and the income thereof, (subject to such lien (if any) thereon as may affect the same under the policies and contracts of the Globe Insurance Company,) upon the following trusts; that is to say, upon trust, in the first place, in case and so often and so long as any default shall be made in payment of the said perpetual annuities, or any of them, or the said trustees shall have reason to believe that some next accruing payment thereof respectively may not be duly made to enter into the receipt of the said income, and therefrom to pay the annuities which shall have been taken in exchange for stock as aforesaid, and then to apply the surplus (if any) of such annual income in replacing any part of the capital of the said fund which may have been sold or called in, and applied in satisfaction
113 of any such lien as aforesaid, and, subject to the said primary trusts, in trust for the Liverpool and London company as part of their general assets and revenue: *Provided*, That after all the policies, contracts, and engagements of the Globe Insurance Company, constituting a lien on the said capital, shall have been satisfied, the investments and securities for the time being constituting the Globe six per cent. perpetual annuity guarantee fund shall be valued, and after reserving upon the trusts affecting the same fund so much of such investments and securities as shall be equal in value to one hundred pounds for every four pounds per annum of such perpetual annuities charged thereon, the surplus (if any) of the investments and securities constituting the Globe six per cent. perpetual annuity guarantee fund shall be transferred to the Liverpool and London company as part of their general assets; but in case at any time or times, from any cause whatever, the value of the Globe six per cent. perpetual annuity guarantee fund shall, while any lien by virtue of any of the contracts of the Globe Insurance

Company is subsisting, fall short of one million pounds, or, after satisfaction of all such liens, shall fall short of one hundred pounds for every four pounds of the subsisting perpetual annuities, then the deficiency shall be made good by the Liverpool and London company, who shall thereupon forthwith transfer to the trustees of that fund sufficient investments or securities to make up the deficiency, it being the intent and agreement of the parties hereto that the Globe six per cent. perpetual annuity guarantee fund shall, at all times, during the subsistence of any such lien as aforesaid be kept up to the full amount of one million pounds, and shall at all times, after satisfaction of all such liens, be sufficient, but not more than sufficient, to provide for the said perpetual annuities at the rate of one hundred pounds in value of securities for every four pounds per annum of annuities, but so always that under no circumstances shall the value or amount of the said fund exceed one million pounds; and the trustees of the Globe six per cent. perpetual annuity guarantee fund shall, at all times, have access to all the accounts, documents, vouchers, and
114 valuations relating to the policies and other engagements charged thereon, or relating to the said Globe life, annuity, and endowment liability fund, and the charges thereon.

Valuation of Globe investments.

11. For the purposes of this agreement, all investments and securities to be transferred by the Globe Insurance Company to the trustees of the Liverpool and London company, and to the trustees of the Globe six per cent. perpetual annuity guarantee fund respectively, shall be taken at the valuation thereof, in the books of the Globe Insurance Company, except the Blessington annuities and the Canterbury annuity and reversion, which are to be valued, if difference should arise, by a competent disinterested person, and offices and hereditaments of the Globe Insurance Company, situate at Cornhill, in the city of London, which are to be valued by two architects or surveyors, or their umpire, none of them being shareholders or stockholders in either company, on the usual terms of reference, and the aforesaid investments are to be taken at such valuation as aforesaid.

Investments may be changed.

12. The investments and securities for the time being, constituting the Globe six per cent. perpetual annuity guarantee fund, may from time time, at the request of the directors of the Liverpool and London company, be changed for any other investments or securities of a kind on which the capital of one million pounds of the Globe Insurance Company has heretofore been or is now invested according to the usage of that company, but no such change of investment shall be made without the previous approval and consent of the trustees of the said fund: *Provided*, That the said trustees shall be at liberty, in case of any securities which the directors of the Liverpool and London company shall propose to substitute for other securities subject to the trust, to accept the opinion of the solicitors and counsel of the said Liverpool and London company as to the title thereto.

Meetings of trustees of perpetual annuities.

13. The trustees of the Globe six per cent. perpetual annuity guarantee fund shall meet once in every calen-

115 dar month, or oftener, and transact the business of their trust, at the principal office of the Liverpool and London company in London. The resolution of three or more trustees, being the majority of the trustees present at any meeting of the trustees, shall bind all the trustees, but no business shall be transacted at any meeting unless four trustees are present.

Resignation, &c. of trustees.

14. If any trustee of the Globe six per cent. perpetual annuity guarantee fund gives notice in writing to the secretary of the Liverpool and London Company of his desire to resign his office, or is absent for six consecutive months from the meetings of the said trustees, or is adjudged bankrupt, or makes any arrangement with the major part in number or value of his creditors, or goes to reside at any place beyond one hundred miles in a straight line from the Royal Exchange, London, or becomes incapable to act in the trusts, or dies, or if the disinterested trustee to be appointed as aforesaid by the Globe directors, or any of his successors, shall by any means other than bequest, or devolution, or act of the law, become entitled at law or beneficially to any part of the said perpetual annuities, or to any share or stock in the Liverpool and London company, or if such disinterested trustee, or any of his successors, who may become entitled at law or beneficially to any part of the said annuities, or to any share or stock in the last-mentioned company by bequest, devolution, or act of the law, shall not, within two months after he shall so have become entitled thereto, part with the same, then and in every such case he shall cease to be a trustee of the said fund.

Power of annuitants in removing trustees.

15. A meeting of the annuitants shall be at liberty at any time to pass a resolution that any of the trustees appointed by the directors of the Globe Insurance Company, or any of their successors, shall cease to hold the office of trustee, and in like manner the board of directors of the Liverpool and London company shall be at liberty from time to time to pass a resolution that any of the trustees appointed by the directors of the last-mentioned company, or any of their successors, shall cease to be a trustee; and when and so often as any such resolution shall be passed, the party who is by such resolution declared to be no longer a trustee shall cease to be one of the trustees of the said fund.

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Election of new trustees.

16. As often as any vacancy shall occur among the trustees of the said Globe six per cent. perpetual annuity guarantee fund, a new trustee shall forthwith be appointed in the place of the trustee whose removal or disqualification shall cause the vacancy, and any trustee to fill the place of any of the trustees appointed by the directors of the Globe Insurance Company, or of any of the successors of any of such trustee, shall be appointed by the owners for the time being of the said perpetual annuities, and every trustee to fill the place of either of the trustees to be appointed by the directors of the Liverpool and London company, or of any of the successors of either of the said trustees, shall be appointed by the board of directors of the Liverpool and London company, and the trustee to fill the place of the disinterested trustee, or of any successor of such trustee, shall be a commercial man, not entitled at law or bene-

ficially to any part of the said perpetual annuities, shares, or stock.

Meetings of annuitants, how convened.

17. Every meeting of the annuitants shall be convened and conducted in the same manner, as nearly as may be, as is provided for the convening and conduct of extraordinary meetings of shareholders or proprietors of the Liverpool and London company. At such meetings all questions shall be determined by the majority of the votes of the annuitants present, in person or by proxy. No annuitant shall vote unless his annuity amounts to thirty pounds per annum at the least, and the holder of an annuity of fifty pounds or upwards, being less than one hundred pounds, shall have two votes, and the holder of an annuity of one hundred pounds or upwards, being less than one hundred and fifty pounds, shall have three votes; and the holder of an annuity of one hundred and fifty pounds or upwards shall have four votes. Each meeting of annuitants shall appoint its chairman, and the chairman, in case of equality of votes, shall have, in addition to his original vote or votes, a casting vote. Meetings of annuitants may be convened by the same persons who are authorized to convene extraordinary meetings of proprietors in the Liverpool and London company, or by three of the trustees of the Globe six per cent. perpetual annuity guarantee fund, or on the requisition of or by any persons holding perpetual annuities to the aggregate amount of five thousand pounds per annum; but the notices of such meeting shall not be advertised, but shall be given by circular addressed to the respective annuitants, and left at or sent by the post to their respective registered places of abode.

Number of votes.

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No trusts affecting annuities to be recognized.

18. No trusts affecting any perpetual annuity shall be recognized by the trustees of the Globe six per cent. perpetual annuity guarantee fund, or by the Liverpool and London company, but the person or persons for the time being registered in the register to be kept for the purpose, as the owner or holder or joint owner or joint holder of any such annuity, shall be considered as the sole and absolute owner or joint owner of the same annuity for all purposes, and in the case of joint owners, the person whose name stands first on the register of such ownership shall alone be entitled to receive notices of meetings of annuitants and to vote.

Payment of trustees.

19. The trustees to be appointed by the directors of the Globe Insurance company, and their successors, shall receive out of the funds of the Liverpool and London company an annual remuneration of three hundred pounds, to be divided among them in such manner as such trustees shall determine, and the qualification of every trustee to be appointed by the directors of the Globe other than that of the disinterested trustee, and the qualification of each of the successors of every such trustee other than as aforesaid, shall be an annuity of at least sixty pounds per annum. The Liverpool and London Company shall provide a proper secretary and other clerks to attend the meetings and obey the orders of the said trustees, and all expenses incurred by the said trustees in connexion with the aforesaid trust

Trustees to have secretary and clerks provided.

shall be borne and paid by the said Liverpool and London company.

118 20. All the investments, securities, monies, property, and assets of the Globe Insurance Company which shall remain after payment of the debts of the company which were payable on or before the twenty-ninth day of September one thousand eight hundred and sixty-two, and setting apart and transferring securities to the amount of the said Globe life annuity and endowment liability fund, and of the Globe six per cent. perpetual annuity guarantee fund, shall remain the property of the present proprietors or shareholders in that company, and shall be disposed of by the directors of that company, for the benefit of its shareholders, in such manner and at such time or times as the directors shall think fit. Globe surplus assets.

21. Arrangements shall be made, if practicable, for combining the name of the Globe with that of the Liverpool and London company. The present directors of the Globe Insurance Company, or such of them as shall elect to be directors of the Liverpool and London company, being duly qualified for that office, shall be at liberty to join the London board of the Liverpool and London company, and they shall be entitled to hold the office of such director for a period of not less than three years from the time of their joining the board of directors of the said company, and to receive the same remuneration while in that office as they now receive as directors of the Globe Insurance Company. Name of Globe to be combined.

22. An act of Parliament shall forthwith be applied for at the expense of the Liverpool and London company for the purpose of confirming and giving effect to the terms of this agreement; and in the mean time each company shall carry on its own business, and this agreement shall be conditional on obtaining the said act. Act to be applied for.

23. All the costs, charges, and expenses of carrying this agreement into effect, and the performance of the trusts hereby created, shall be paid by the Liverpool and London company out of their general assets. Cost of act to be paid for by Liverpool and London.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

119 *The first schedule above referred to.*

1. Arrangements with the Globe agents generally, and especially the special arrangements with Mr. Chadwick, of Manchester; Mr. Penny, of Glasgow; Mr. Nunnelly, of Birmingham; and Mr. Adams, of Dublin.

2. The like with solicitors, medical referee, surveyor, and bankers.

3. The actuary, Mr. Hendricks, the fire superintendent, Mr. Lane, and such other of the Globe staff as may be arranged, shall be taken over by amalgamated company at their present remuneration.

The second schedule above referred to.

List of pensions payable by Globe Insurance Company to undermentioned persons for their respective lives.

	Age.	Amount of annuity.
John Charles Denham, formerly secretary to the company	83	£1,000

Charles Hindley, formerly fire superintendent.....	81	380
Thomas Caldwell, formerly chief clerk in country office.	75	320
James Howe, formerly accountant.....	69	350
William Hebart, formerly clerk.....	62	150

S. [L. S.] NEAVE.
GEO. CARR [L. S.] GLYN.
JAMES ASPINALL [L. S.] TOBIN.
WILLIAM [L. S.] DENT.
FOWLER [L. S.] NEWSAM.
HAROLD [L. S.] LITTLEDALE.
C. S. [L. S.] PARKER.

Signed, sealed, and delivered by the within-named Sheffield Neave, in the presence of—
WILLIAM H. EMMET, 5 *Bank Buildings, London.*

Signed, sealed, and delivered by the within-named James Aspinall Tobin, in the presence of—
SWINTON BOULT, *Liverpool.*

Signed, sealed, and delivered by the within-named William Dent, George Carr Glyn, and Fowler Newsam, in the presence of—
WILLIAM H. EMMET.

Signed, sealed, and delivered by the within-named Charles Stewart Parker, in the presence of—
SWINTON BOULT, *Liverpool.*

Signed, sealed, and delivered by the within-named Harold Littledale, in the presence of—
SWINTON BOULT, *Liverpool.*

120 *The second schedule referred to by the foregoing act.*

Memorial made the day of , 18 , of the names of the first or original trustees of the Globe six per cent. perpetual annuity guarantee fund, to be enrolled pursuant to an act of Parliament passed in the 27th year of the reign of her Majesty Queen Victoria, intituled, [here insert the title of this act.]

A. B., of
C. D., of
E. F., of
G. H., of
I. K., of

I, X. Y., of , in the county of , the secretary of the Liverpool and London and Globe Insurance Company, do hereby solemnly and sincerely declare that the above-written memorial contains the names of the first and present trustees of the said Globe six per cent. perpetual annuity guarantee fund; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled "An act to repeal an act of the present session of Parliament intituled 'An act for the more effectual abolition of oaths and affirmations

taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.'"

(Signed) X. Y.

Solemnly declared before me—

121 *The third schedule referred to by the foregoing act.*

In case of a change of any of the trustees.

Memorial made the day of , 18 , of the names [or name] of the new trustees [or trustee] of the Globe six per cent. perpetual annuity guarantee fund, and of the persons [or person] in whose places respectively [or place] they have [or he has] been appointed to be enrolled pursuant to an act of Parliament passed in the year of the reign of her Majesty Queen Victoria, intituled, [here insert the title of this act.]

A. B., of trustee in the place of B. A.
C. D., of trustee in the place of D. C.
E. F., of trustee in the place of F. E.

I, A. B., of , in the county of , the secretary of the Liverpool and London and Globe Insurance Company, do solemnly and sincerely declare that the above-written memorial contains the names of the new trustees [or the name of the new trustee] of the Globe six per cent. perpetual annuity guarantee fund, and of the persons [or person] in whose places respectively [or place] they have [or he has]' been appointed, as the same appears in the books of the said company; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled "An act to repeal an act of the present session of Parliament, intituled 'An act for the more effectual abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.'"

Solemnly declared before me—

(Signed) A. B.

N. B.—The last memorial as to new trustees [or a new trustee] was enrolled on the day of , 18 .

(Indorsement on cover?) No. 249. The Liverpool & London Life and Fire Insurance Company, pl'ff in error, vs. Henry K. Oliver, treasurer & receiver general of the Commonwealth of Massachusetts. Massachusetts sup. court.

Filed 20th August, 1869.

United States Supreme Court.

NO. 249.

THE LIVERPOOL AND LONDON LIFE AND FIRE INSURANCE CO., PLAINTIFFS IN ERROR,

vs.

HENRY K. OLIVER, TREAS. AND RECEIVER-GEN. OF THE COMMONWEALTH OF MASSACHUSETTS.

BRIEF FOR THE PLAINTIFFS IN ERROR.

BOSTON:
ALFRED MUDGE & SON, LAW PRINTERS, 34 SCHOOL STREET.
1870.

United States Supreme Court.

No. 249.

THE LIVERPOOL AND LONDON LIFE AND FIRE INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

HENRY K. OLIVER, TREASURER AND RECEIVER-GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS.

BRIEF FOR THE PLAINTIFFS IN ERROR.

THIS is a writ of error to the Supreme Judicial Court of the Commonwealth of Massachusetts, to reverse a judgment of that court in favor of the defendant in error.

The action in which the judgment sought to be reversed was rendered, was a bill in equity in favor of the defendant in error against the plaintiffs, to collect a tax assessed upon them by the Commonwealth of Massachusetts, for the year 1864, of $2,875.98, upon premiums of insurance received by the plaintiffs on insurance business transacted by them in that Commonwealth, and also to restrain the plaintiffs from doing any further business until the tax was paid. The bill was founded on a statute of said Commonwealth, imposing a tax of four per cent upon all premiums received by any Fire, Marine, or Fire and Marine Insurance Company, incorporated or *associated* under the laws of any government or state, other than one of the United States. The same statute imposes a tax of one per cent upon all premiums received by companies incorporated, by its own laws, and of two per cent upon all premiums received by any company incor-

porated under the laws of either of the United States. The bill alleges the plaintiffs are a corporation created by the laws of Great Britain, and *an association of persons associated under the laws of Great Britain, as a Fire Insurance Company.* (Record, pp. 2 & 3.) The answer denies that the plaintiffs are a corporation, but alleges they are associated together as a partnership of natural persons under the laws of Great Britain, some of whom are citizens and residents of Great Britain, and some of whom are residents and citizens of the State of New York. (Record, page 5.) The answer further alleges, that the plaintiffs are doing all their insurance business as a partnership of natural persons, some citizens of Great Britain, and some of New York, and that the statute in question cannot bind them, because it would violate Article 4, Section 2, of the Constitution of the United States, and because it would conflict with the treaty of 1815, between Great Britain and the United States. (Record, page 4).

The parties agreed to a statement of facts by which the case was to be heard on the bill, and answer and other facts set forth. By this statement it is agreed that certain agreements, deeds, instruments and acts of the British Parliament annexed to the plaintiffs' answer, were duly executed, delivered and passed, and that the plaintiffs in error associated under the same, that under and by virtue of said agreements, deeds and acts of parliament, certain citizens of the State of New York had become members of the plaintiff's association, with all the rights of the British members. (Record, pages 5 and 6.)

The decision was in favor of the validity of the statute in question, holding it not repugnant to the Constitution of the United States, or to the treaty between the United States and Great Britain, made in the year 1815; the certificate of the chief justice of the Supreme Court further finds that in said suit there was drawn in question the construction of a clause of the Constitution of the United States and of a treaty with Great

Britain, and that the decision was against the right, title, privilege and exemption set up and claimed under said clause of said constitution and said treaty. (Record, page 9.)

The statute of Massachusetts, above referred to, is Chap. 224, of the year 1862, and the first and second sections, which are the only material parts of it, are as follows, viz.: —

SECTION 1. "All Fire, Marine, and Fire and Marine Insurance Companies, incorporated under the laws of this Commonwealth, shall pay taxes to the Treasurer of the Commonwealth as follows, to wit: one per cent per annum on all premiums received for insurance either in cash or in notes absolutely payable by any of such companies, whether stock, mutual or mixed, and one per cent on all assessments made by any mutual or mixed companies."

SECT. 2. "Each Fire, Marine, and Fire and Marine Insurance Company, incorporated by any other state of the United States, shall annually pay * * a tax of two per cent upon all premiums charged or received on contracts made in this Commonwealth, for the insurance of property, or received or collected by agents in this Commonwealth; and each Fire, Marine, and Fire and Marine Insurance Company, incorporated or associated under the laws of any government or state, other than one the United States, shall annually pay * * a tax of four per cent upon all premiums charged or received on contracts made in this Commonwealth for the insurance of property, or received or collected by agents in this Commonwealth."

No tax is imposed, by the laws of Massachusetts, upon the business of insurance transacted by any natural persons, citizens of the state.

Upon this record, the plaintiffs in error claim,

1st. That they are not a corporation, but a partnership of natural persons, citizens of Great Britain and New York; and,

2d. That the statute under which the bill is brought, is void so far as they are concerned; because,

3d. It is in derogation and violation of Article 4, Sect. 2, of the constitution of the United States, which secures to the citizens of each state all the privileges and immunities of citizens in the several states; because it is in conflict with that portion of Section 10 of Article 1 of the same constitution, which vests in congress the power to regulate commerce with foreign nations, and because it is in violation of the provisions of the treaty of 1815, between the United States and Great Britain, which secures to British subjects the privileges of trade and commerce within the limits of all the states; and because no state has a right to discriminate by taxation against citizens of a foreign government, with whom the United States has a treaty.

I.

That the defendants are not a corporation will be apparent when the facts bearing on that question are carefully considered. In the first place, whatever may be the character of the defendants, their association together and their relations to others, they must depend upon the laws of Great Britian. If the defendants are not a corporation by the English law, then they are not by our law, because here they have done no act in any way to alter or change their legal status or their relations to others. Indeed, our law does not in any way apply to them, act upon or affect their character, or profess to do it; it leaves that to be defined by the laws of the country under which they formed their association.

By examining the laws of Great Britian upon this subject, there can be no doubt left that the defendants are an association of natural persons, a partnership in fact, with certain privileges given them by special acts of the legislature.

In the first place, the origin of the association was by a deed entered into by the natural persons who proposed to associate together, and two trustees, who were to hold the property of all

the members, which deed regulated and controlled the manner in which the business in which they were all interested was to be done for the common profit. (See deed of May 21, 1836, Exhibit A, of the answer, record, p. 10, 11.)

This deed did not in any way contemplate a corporation; but only a partnership, whose property should be holden by trustees, and which should be able to make and enforce contracts with its own members, leaving each member of the partnership liable for all debts of the firm.

To transact the business of such an association or partnership, it was necessary to obtain from the legislature certain privileges and powers as to the prosecution of suits by and against them.

Accordingly, by an act of Parliament (sixth and seventh of William IV., July 14, 1836, Exhibit A, Record, pp. 52, 53), reciting the inconvenience of suing all the partners, it was provided that suits might be brought by or against the partnership in the name of one of the officers; and by its 6th and 7th sections (Record, pp. 55, 56), that execution might be taken on any judgment recovered against such officer against any or all the partners, and also that any contract to exempt the partners from personal responsibility for any debt of the association should be unlawful (page 56).

By section 12 of the same act (Record, p. 57), the defendants are called a "partnership."

Section 13 (Record, p. 57, 58) expressly provides that the act shall not be taken or construed to "incorporate" the defendants.

The supplemental deeds (Exhibit A, Record, pp. 42, 46) made some changes in the original deed of settlement, among other things providing for the admission of partners and for the transaction of their business through agents in foreign countries (Record, pp. 42, 43, 44).

Another act of parliament was passed July 22, 1847 (11th of Victoria), (Record, p. 59), enabling the defendants to change

their name by inserting "and London" after Liverpool. In this act, too, it was expressly provided that it should not be construed to *incorporate* the defendants. (Record, p. 61.)

Another act of parliament was passed (27th and 28th of Victoria, June 23, 1864, Record, p. 62), confirming an agreement to unite the defendants with the Globe Insurance Company, the twenty-second section of which (Record, p. 71) very carefully provides that it shall not be held to "incorporate" the defendants or confer "limited liability" upon them, or alter or vary their liability under their deeds, this last provision being inserted to exclude them from the benefits of the general act, allowing the formation of companies with liability of stockholders only to the amount of their stock, which had been passed since the first deed of settlement of the defendants in 1836.

Under the power in the first supplemental deed to extend the business of the company into foreign countries, and permit citizens thereof to become members, agencies have been established in this country, and citizens of the state of New York have become members, liable to all the duties and obligations of the original partners. (Record, p. 6.)

Now, upon this statement, no claim can be made that the defendants are a corporation, are in fact anything more than a partnership of a large number of natural persons having procured certain privileges from the government, under which they associated together for the convenience of those who deal with them.

In Great Britain, the king and parliament only can create corporations. In this case, neither have exercised the power, but when parliament granted to these defendants certain privileges, especial care was taken to declare that the grant made should not create a corporation.

If the defendants are a corporation, how were they created? Not in the country where they associated together by contract

between themselves, because, as we have seen, the two branches of the government, only having the power to create corporations, have not only refused to incorporate, but have declared they were not a corporation. Not by any act of this or any other state of the United States, because the law in this country has not undertaken to act upon or affect in any way their legal status, and because if the defendants were made a corporation directly or indirectly by this or any state, then a different tax would be levied upon them by the very act under which this bill is being prosecuted.

By the provisions of the act, the only question, in this part of the case, is whether the defendants have been *incorporated* by the laws of any foreign government; and as we have the articles of their association under such government, and the laws applying to their association, which declare expressly that it shall not be a corporation, such facts would seem to be conclusive.

Here the defendants would not possess and enjoy the privilege, or be subject to the liability of being sued, and suing in the name of an officer of their association, but would be obliged to sue or be sued in the name of all partners, for the acts of parliament giving that right and imposing that liability, apply to the manner of enforcing a remedy, and cannot avail beyond its own limits and courts.

So that when the defendants transact their business in this country, the acts of parliament, giving some of the privileges of corporations, are of no avail to them; in fact they are like any partnership of natural persons, and must be treated in the same way, entitled to the same rights and privileges, and subject to the same liabilities.

By examining the English text-books and authorities upon the subject of companies and associations of a like nature, it is clear that the defendants are not by the laws of Great Britain a corporation; this partnership was formed before passage of the general acts allowing the formation of joint-stock companies

with limited liability, and is not subject to the provisions of those acts. The character and nature of such associations are discussed, however, in the text-books on the subject of joint-stock companies.

Lindley on Partnership, 2, 3, 4, 5, 1165.
Wordsworth on Joint Stock Cos. 232, 41–275.

There are also numerous cases in the English Reports where the rights, privileges, and liabilities of such bodies are passed upon. By an examination of all the authorities, the fact that associations like that of the defendants', are not corporations, would seem to be established beyond any question.

Lindley on Partnership, 2, 3, 4, 5, 1165.
Wordsworth on Joint Stock Cos. 232, 41, 275.
Harrison *vs.* Timmins, 4 M. & Wels. 510.
Bartlett *vs.* Pentland, B. & Ad. 704.
Van Sandau *vs.* Moore, 1 Russell, 441.
Capes Executors, 2 De G. M. & G. 562.
Mahan's Case, 5 De G. M. & G. 562.
Blakeley's Exec., 13 Beav. 133.
Barnes *vs.* Pennell, 2 H. of L. cases, 522.

But if the defendants were an association of our own citizens, formed here under like deeds of settlement, and like acts of the legislature, they would not be held to be corporations.

The association does not make out of its members a new artificial political person; it still remains a body of natural persons, with certain privileges conferred upon them. No new body is created by the legislature with the property of individuality, and the capacity of holding property and transacting business. Indeed, the association falls entirely short of being a corporation, as usually defined and understood.

Dartmouth College *vs.* Woodward, 4 Wheaton, 636.
Prov. Bank *vs.* Billings, 4 Peters, 562.

Nor does this case fall within a principle often acted upon by courts, that when a collective body of natural persons are granted powers, rights and privileges by a collective name, and there is no mode in which they can be enjoyed and exercised, without acting in a corporate capacity, such a body is held to be a corporation by necessary implication.

Here, no such implication can arise. It is precluded by the legislative declaration that a corporation shall not exist, and by the fact that the deeds and legislative acts very minutely and carefully provide in what manner the rights and powers granted shall be enjoyed and exercised. Indeed, it is always holden, that where a corporation is so established by implication, the legislative intention to confer a corporate existence must be certain and plain.

Stebbins *vs.* Jenkins, 10 Peck. 189.
School District *vs.* Wood, 13 Mass. 197.
Med. Inst. *vs.* Patterson, 1 Denio, 61.
S. C. 5 Denio, 618.
Myers *vs.* Irvin, 2 Serg. & Rawle, 368.
Angell on Cor., Sec. 79.

Nor can it be claimed here that the defendants are to be holden to be a corporation because in most cases in their returns to the secretary of the Commonwealth, they have in reply to the question "when incorporated," answered, in 1836, and because in the appointment of an agent and attorney in 1852, their resident secretary in New York, styled them a corporation. (Record, p. 6.)

At the best, these admissions can only be considered evidence, by no means conclusive, indeed, of slight value under any circumstances, but of none at all, when, as in this case, we have the whole evidence before the Court, bearing on the question of the defendants being a corporation.

The fact that the defendants admittted themselves or claimed

to be a corporation, does not make them so, or bear with much weight in deciding whether they are. The question whether they are a corporation or not is not to be decided by the defendants, or their admissions or declarations. In one case, even when an association was styled a corporation by the legislature in one of their acts, the fact was holden of no consequence in deciding whether they were or not.

Medical Inst. *vs.* Patterson, 1 Denio, 61.
Phillips *vs.* Pearce, 5 B. & Cr. 423.

Nothing can be claimed against them from the doctrine of estoppel. The Commonwealth have lost nothing, never altered their position in any way by reason of this claim on the part of the defendants; and therefore they are not estopped from proving the facts as they actually exist.

It is to be noticed, also, that in one return at least, the defendants state very distinctly *that they are not incorporated.* (Record, p. 6.)

II.

Taking the fact as established, that the defendants are not a corporation, but only a partnership of natural persons, clothed by act of parliament with certain privileges and powers, and considering the members of said partnership as subjects of Great Britain, reserving the fact that some of them are citizens of New York, for consideration hereafter, we first propose to consider whether the act of Massachusetts imposing heavier and other taxes on English subjects carrying on business here, than are imposed on our own citizens, are valid under the existing treaty between the United States and Great Britain. If the law in question is at variance with the treaty, of course it is void, as treaties are "the supreme law of the land."

It is provided by that treaty as follows:—

"There shall be between the territories of the United States of America, and all the territories of His Britannic Majesty in

Europe, a reciprocal liberty of commerce. The inhabitants of the two countries respectively, shall have liberty freely and securely to come with their ships and cargoes to all places, ports, and rivers, in the territories aforesaid, to which other foreigners are permitted to come, to enter into the same, and to remain, and reside in any parts of the said territories respectively; also to hire and occupy houses and warehouses for the purposes of their commerce; and generally the merchants, and traders of each nation respectively, shall enjoy the most complete protection, and security for their commerce, but subject always to the laws and statutes of the two countries respectively."

Convention between the United States and Great Britain of July 3, 1815. 7 United States Statutes at Large, 228. Volume of Treaties.

The above Convention indefinitely extended.

8 United States Statutes at Large, 361. Volume of Treaties.

Of course the rule of construction of that treaty must be to deal with it liberally, so that under it, the freest and largest intercourse may take place between the two countries. This would be according to the present established policy of the civilized world, and especially so of this country, where we have from the beginning acted with the utmost liberality towards citizens of other nations.

Public policy would require a further rule of construction in a case of this kind, and that is, wherever there was any reasonable doubt as to the right and power of a state to pass laws, in any way interfering with or having reference to the rights and claims of citizens of other governments, to let the doubt weigh against the power claimed by the state.

The whole policy of our system of government is to give the Federal authorities the entire power over intercourse with

foreign nations and their subjects, and our commerce with them, and to take from the states the power to interfere in any way in reference to such questions. Therefore, whenever it is doubtful whether a state law does or not interfere with the Federal authority to control and regulate such matters, the decision should be against the law.

Approaching the question, then, in view of such considerations, of the great liberality of our government in its dealings with the subjects of other governments, of the settled policy that the Federal and not the state authority should deal with questions arising out of our intercourse with foreigners, we claim that the law of Massachusetts must fairly be considered in conflict with the treaty referred to.

The treaty provides "that the merchants and traders of such nation, shall enjoy the most complete protection and security for their commerce."

In reference to that "commerce," whatever it may be held to mean, clearly no state could tax a British subject where it did not tax one of its own citizens; it could not discriminate against the commerce of the foreigner; this is too clear for argument; if the state could discriminate all, it would be easy to make discrimination ripen into prohibition.

The real question upon which the decision must depend, is what is here the meaning of the word "commerce." What does that word fairly mean, what business does it include when used in the treaty?

In this treaty, take the connection in which it is used, its object and purpose being to define the status of citizens of Great Britain in this country, we hold it to be clear that *commerce* is meant to include every legal business in which such citizens could engage.

We claim that by a series of decisions and enactments that word has a wider and larger significance than is frequently given to it. Indeed, the meaning of the word is *intercourse*, in

its largest sense. This meaning was given to it in defining and construing the power of the Federal authorities to regulate *foreign commerce*.

Chief Justice Marshall thus explains and defines its meaning:

"The counsel for the appellee would limit it (the term commerce) to traffic, to buying and selling, or the interchange of commodities. This would restrict a general term applicable to many objects to one of its significations. Commerce undoubtedly is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse. It has, we believe, been universally admitted that these words comprehend every species of commercial intercourse between the United States and foreign nations."

Gibbons *vs.* Ogden, 9 Wheaton, 189.

The same meaning has been given to the words in other cases.

Cooley *vs.* Port Wardens, 12 Howard, 299.
Sinnot *vs.* Davenport, 22 Howard, 244.
Almey *vs.* California, 24 Howard, 169.
Smith *vs.* Turner, 12 Howard, 283–413.

So before the adoption of the constitution, under the articles of confederation, the word commerce had been practically construed to mean the transaction of all kinds of business. One article declares that the citizens of each state should enjoy in the several states all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof. Under this article, by universal practice and consent, "commerce" was taken to mean the transacting of any business.

Again, under the constitution, power is given to the United States to "regulate commerce among the Indian tribes."

It has been holden that under this power, Congress could forbid any intercourse with the Indians, except under license, thus establishing the meaning of *commerce* as being *intercourse, and the transaction of any business.*

United States *vs.* Cesnar, 1 McLean, 260.
Same *vs.* Haas, 3 Wallace, 407.

With this definition and application of the term commerce, ought there to be any doubt that it was meant when used in the treaty, to include any legal business in which the citizens of Great Britain might engage.

Commerce meant in the treaty certainly would include the making of all contracts either necessary or which might favor trade, and the traffic of buying or selling. No one would deny for a moment that the contract for the transportation of merchandise by land or water, or the business of a broker buying or selling goods, would fairly be included within the words commerce. Why then may not, with the same propriety, contracts of insurance be also included within the meaning of the same as used in the treaty?

The treaty provides for the *residence* of British subjects here, and their having houses and warehouses. This would seem to contemplate the transaction of any business by them on the same terms that it was transacted by our own citizens.

But at any rate this whole subject of the status of the citizens of Great Britain, by the constitution and treaty is left exclusively to the government of the United States. The states cannot make laws to regulate such status, to discriminate against the foreigner; they can make no treaty; that subject is left entirely to the Federal Government by the constitution. And by the terms of this treaty, the subjects of the *nations* are to be subject to the laws of the two countries respectively, not to the laws of the states regulating their rights and conditions, as foreigners, but of the United States, only.

The treaty uses the terms, "the inhabitants of the two countries," "the traders of each nation," and "the laws of the two countries," always expressing the one idea of *American* nationality. "The laws of the two countries," in this treaty do not mean, then, the laws of the individual states, but the laws of the government of the United States.

That is to say, by the treaty, the United States undertook to engage that the subjects of the English Crown should enjoy certain privileges of business within the United States "subject to the laws of the United States," alone. Or, to be still more explicit, the government of the United States undertook to guarantee certain business privileges to the subjects of the British Crown; and further undertook that the regulations of the business by such English subjects, so far as the same might require special regulation, should be made by the government of the United States. All regulations necessary to be made in regard to British subjects engaged in business within the United States, as foreigners, were to be made by the government of the United States. The laws passed by the State of Massachusetts, heretofore cited and referred to, are therefore void, because they undertake to regulate the business status of British subjects, as foreigners; this matter, by the treaty of 1815, being specially reserved for the action of the government of the United States.

Ware *vs.* Hylton, iii. Dallas, 242.

Fairfax's Lessee *vs.* Hunter's Lessee, vii. Cranch, 627.

So long as the states in their individual capacity content themselves with general laws, intended to operate alike on all the mass of residents within their territorial limits, there can be no just objection to the laws; for British subjects coming within the jurisdiction may be supposed to consent to such jurisdiction. But when the states go beyond this general legislation, and endeavor to legislate specially, and prejudicially, for the case of British subjects engaged in business, they run counter to the

stipulations of the treaty of 1815, and such legislation is of no effect.

Giving, therefore, a liberal construction to the treaty, so that it may fairly express the policy of the government and the people in making it, and the liberal spirit of the age on the subject of the intercourse of foreign nations with each other, no state has the right to make laws forbidding or discriminating against foreigners in the transaction of any business permitted to its own citizens.

III.

The law is also in conflict with that provision of the constitution which gives to the United States the regulation of commerce with foreign nations.

Substantially the same reasons would apply on this point, as have been urged in reference to the law being in conflict with the treaty.

This power is exclusively in the Federal government. Under it, Congress has the full and exclusive right to regulate our intercourse with foreign nations, and that of foreign nations with us. The states have no power to interfere or intervene in reference to such intercourse. Congress certainly would have the right to permit subjects of foreign powers to reside here and carry on any business lawful for our citizens.

As we have seen by the treaty of 1815, with Great Britain, they permit her citizens to reside here, to hire houses and warehouses, and have guaranteed the most complete protection for their trade and commerce. Without interfering with the power of Congress to regulate foreign commerce, can a state forbid the exercise by such subjects of any business lawful to its own citizens; must not that be left to Congress to provide for, and if they do not choose to exercise the power, can the state do it?

We claim that under this provision that all regulations governing British subjects in carrying on business here, must be

made by congress, not by the several states; and if congress has not forbidden the carrying on of lawful business, then the state cannot. If the power was with the states we might have the public scandal of the legal status and powers of British subjects being entirely different in the several states. Such a result was not contemplated by the constitution.

IV.

But whatever may be the power of the state to impose a tax upon subjects of Great Britain greater than that imposed on its own citizens, when doing the same business, no such tax can be imposed on citizens of another state.

Here no tax is assessed on citizens of Massachusetts carrying on the business of insurance, while citizens of New York are taxed four per cent on the whole amount of their premiums.

This is no less a tax discriminating against the citizens of another state, that they happened to be associated together, or with subjects of Great Britain.

There is nothing unlawful in associating together, or with foreigners, and by doing so they lose no rights to which they are entitled under the constitution and laws. Notwithstanding such association, they retain the same rights they possessed before associating with others.

If a single citizen of New York has the right to carry on the business of insurance in Massachusetts, then two or any larger number have the same right, nor is the right lost because subjects of Great Britain join with them.

The laws of Massachusetts do not forbid her citizens from carrying on the insurance business with subjects of Great Britain, or impose any tax upon them if they should engage in such partnership. The citizens of New York then have the same right to form a partnership with British subjects for the

transaction of the same business, without subjecting themselves to a burdensome taxation.

No taxation can be imposed on such association or partnership of citizens of New York, with aliens, without imposing the burdens upon the citizens of New York, when none is imposed under the same circumstances upon our own citizens.

It would seem to be clear, then, that this tax cannot be imposed upon the defendants composed of citizens of another state, and aliens, associated together as partners, and no artificial political person being created by such association, unless it can be maintained that a tax can be imposed on the citizens of another state transacting businesss in this state, while none is imposed on the same business carried on by its own citizens.

Under the second section of Article IV. of the Constitution the citizens of each state are entitled to "*all* the privileges and immunities" of citizens in all the other States.

This was intended to put the citizens of each state upon an exact equality with the citizens of all the other states. It is difficult to understand how stronger or more apt language could be used to restrain any state from imposing taxes upon citizens of another state different from those imposed upon its own citizens. "Immunity" among its other meanings signifies "exemption," "freedom from," and seems peculiarly well chosen to express clearly the meaning intended.

No citizens of one state can with the slightest truth be said to possess and enjoy *all the immunities* of the citizen of another state, if he is exposed to a tax, when the citizen of the other state is not. He may possess some immunities, but not all, for he does not enjoy the *immunity* from taxation.

From the adoption of the constitution this section has uniformly been construed to protect the citizens of one state from a tax discriminating against them in another state; to forbid any state from imposing greater taxes or burdens of any kind

upon the citizens of other states than it imposes on its own people.

Story on the Constitution, Sects. 1805–6.
2 Kent's Com. 91.
Corfield *vs.* Coryell, 4 Wash. C. C. R. 371.
Scott *vs.* Sanford. 19 Howard 58.

Indeed, whenever there has been occasion to put a construction upon this provision of the constitution, it has been held to meet one of the greatest necessities for adoption of the Federal Constitution, viz: that in any state, every citizen of every other state shall possess the same rights, privileges,immunities possessed by the citizens of that state, and that no discriminating legislation should be permitted in one state against the citizens of any other state.

Lemmon *vs.* The People, 6 Smith, 608.
Frost *vs.* Brisbin, 19 Wend. 11.
Rogers *vs.* Rogers, 1 Paige, 184.
Conner *vs.* Elliot, 14 Howard, 591.
Sedgwick on Construction, 600.

Indeed, it is not too much to say, that among the causes contributing largely towards the prosecution of the late civil war when once commenced, was the determination of the people to practically inforce this provision of the constitution in each of the United States.

In this connection, also, it is useful to consider the provision on this subject in the Articles of Confederation, and the practical construction put upon it. It is there provided that the citizens of each state shall have all the privileges and immunities of free citizens of the several states, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof. Under this article, practically, the citizens of each state were put upon

an exact equality with the citizens of any other state so far as business and its transaction was concerned. The constitution being adopted to bring about a "more perfect union," it would be strange indeed if under it the citizens of the several states, in other states possessed fewer rights and immunities than under the confederation.

B. R. CURTIS,
J. G. ABBOTT,
For the Defendant in Error.

Supreme Court of the United States.

No. 249.

Liverpool and London Life and Fire Insurance Company,

PLAINTIFFS IN ERROR,

vs.

Henry K. Oliver, Treasurer and Receiver-General of the Commonwealth of Massachusetts.

BRIEF FOR THE DEFENDANT IN ERROR.

WRIGHT & POTTER, Printers.

Supreme Court of the United States.

No. 249.

Liverpool and London Life and Fire Insurance Company,
PLAINTIFFS IN ERROR,

vs.

Henry K. Oliver, Treasurer and Receiver General of the Commonwealth of Massachusetts.

BRIEF FOR THE DEFENDANT IN ERROR.

The defendant in error, who was a former Treasurer of the Commonwealth of Massachusetts, brought a bill in the supreme judicial court of Massachusetts, for an injunction restraining the plaintiffs in error and their agents from the further prosecution of their business as an insurance company, until the payment of a tax of four per cent. upon their premiums for the year 1864. This tax became due under the following provision, contained in the Massachusetts statute of 1862, *c.* 224, § 2: "Each fire, marine, and fire and marine insurance company incorporated or associated under the laws of any government or state other than one of the United States, shall annually pay to the treasurer of the Commonwealth a tax of four per cent. upon all premiums charged or received, on contracts made in this Commonwealth, for the insurance of property, or received or collected by agents in this Commonwealth."

Section 11 of the same statute provides that "every corporation or association of persons neglecting to pay the taxes imposed by this act as herein before provided, shall be liable for

the same with costs and interest in an action of contract in the name of the Commonwealth at the suit of the treasurer, and shall be further liable, on application of the treasurer of the Commonwealth therefor to any one of the justices of the supreme judicial court, to injunction restraining said corporation or association and the agents thereof from the further prosecution of its business, until all taxes due by virtue of this act, with costs and interest, shall be fully paid."

The main grounds on which the payment of this tax is resisted are understood to be, briefly, that citizens of Massachusetts may carry on the business of insurance within the Commonwealth, without being liable to this tax; that under the Constitution of the United States citizens of other states may do the same, being entitled to the same privileges and immunities in Massachusetts as citizens of Massachusetts; that certain citizens of New York are members of the company of the plaintiffs in error; and that therefore this company are entitled to carry on the business of insurance in Massachusetts without being liable to the tax. It is also contended, as another ground of defence, that this company are composed in part of British subjects; that under the treaty British subjects have the privileges of trade and commerce within any of the United States; and that therefore this company may carry on the business of insurance in Massachusetts without being liable to this tax.

The opinion of the supreme judicial court of Massachusetts holding the plaintiffs in error liable to the payment of the tax is reported in 100 Mass. 531.

I. There can be no doubt that the above provisions of the statute were intended by the legislature to apply to such companies as the plaintiffs. Reference to the prior legislation of Massachusetts shows this conclusively. Formerly, it appears to have been the impression that all foreign insurance companies which were likely to do business in Massachusetts were incorporated, and the statutes constantly referred either to "corporations," or to "companies" as if they were incorporated. See Rev. Sts. *c.* 37, §§ 40–48; *St.* 1847, *c.* 273; *St.* 1851, *c.* 331, §§ 1–7, especially § 4; *St.* 1852, *cc.* 231, 311; *St.* 1854, *c.* 453, §§ 9, 30, § 35; *St.* 1856, *c.* 252, § 48. By examining these various statutes, it will be found that down to the time of the

statute last cited, the legislature appear to have assumed that these companies were all so far incorporated that no question on this point could arise.

But, as if to guard against any possible mistake, the statute under which the present cause was instituted uses different language, and contains distinct reference to companies not incorporated, but associated. The words there used, "Each insurance company incorporated *or associated* under the laws of any government," &c., and "every corporation *or association* of persons," were new to the legislation of Massachusetts, and were obviously used for the purpose of including just such companies as the plaintiffs in error, if there could be any doubt of their being included in the legislation already existing.

II. The plaintiffs in error were a corporation, within the general understanding of what constitutes a corporation in this country, and especially within the contemplation of the Massachusetts statutes.

It is true, that the various acts of parliament conferring corporate privileges upon the plaintiffs in error declare that it is not the intention thereby to constitute them a corporation; and if merely saying that they are not to be a corporation, at the same time when all the essential qualities and privileges of a corporation are bestowed upon them, would make it that they are not in fact a corporation, then it would have to be admitted that they are not a corporation. But in ascertaining the legal character of the plaintiffs' company, we are not to look at what they are called, but at what they really are.

The practical question is, whether they are or are not a corporation, within the meaning of the statutes of Massachusetts, for the purpose of taxation.

By what rule is the question to be tested? The essential characteristics of a corporation are not the same, at different times and in different countries. The definitions of a corporation vary. Certain things were formerly deemed essential qualities of a corporation, which are so no longer. Thus, a common seal formerly had essential significance, in those days when it was considered that corporations could only act by deed; but now, in this country, the common seal is of no significance. It is a mere ornament, and without use.

Therefore, this question is not to be determined by simply looking to see whether the acts of parliament say in express terms that this company shall or shall not be a corporation, or by applying exclusively any rules of English law; but we are to examine into the real character of this company, and inspect it in its operations and practical workings, and see whether it is not really a corporation.

This will require us, in the first place, to see what sort of a company this is; and then to see what sort of a company is required, in order to constitute a corporation.

An examination of the deeds of settlement of the company will show that they strained all laws applicable to partnerships to the very utmost, in the endeavor to provide for the transaction of their business without applying to parliament for corporate privileges.

First Deed of Settlement, in 1836.

The contemplated business is extensive and various, and such as is not usually done in this country otherwise than by corporations; page 11, § 2. There is a large capital stock, £2,000,000 sterling, divided into shares; § 3. There are to be twenty-one directors; § 4, with a chairman and secretary; § 5. There are to be general and special meetings; §§ 7–13. All questions are to be decided by a majority of votes, the number of votes being graduated upon the ownership of shares; §§ 14, 15. Members have no right to vote if any calls remain unpaid; § 16. Records are to be kept; § 17. Directors are to report annually, and recommend dividends; § 18. The capital stock may be reduced or increased at any meeting. New shares may be allotted or sold; § 20. There are to be by-laws; § 20. The directors are to be paid; § 21. Seven directors are to retire annually; § 23. Questions before directors are to be determined by a majority vote; § 24. The directors to manage the business; §§ 34–37. No proprietor can bind the company by any contract; § 42. The directors subscribing policies to lend their names in actions for calls, and to be indemnified; §§ 45, 46. Directors may bring actions against members of the company in the name of the chairman or any of the directors; § 48. They may also refer disputes to arbitration; § 49; make by-laws; § 50; appoint officers, trustees, &c., and take grants; §§ 51, 52. The business of the company is to be done by the

directors exclusively; § 55. No proprietor shall be entitled to inspect the books or accounts, or to have an inspection thereof in equity; § 62. Directors to control dividends; §§ 63–66. The shares to be transmissible by deed or will, or in case of intestacy to personal representatives; §§ 68, 80. Certificates of shares are to be issued and registered; §§ 72, 73. New certificates to be issued on transfers; § 83. Directors may sue for instalments payable on shares, in the name of the trustees; §§ 74, 75. Shares are to be forfeited on non-payment of calls; § 76. Directors may purchase shares in the company for the benefit of the company, and keep them or sell them again; § 79. Obligations of proprietors to cease on forfeiture or transfer of shares; § 90. The company may be dissolved by two-thirds vote of the proprietors at two successive meetings; § 95. If it shall appear desirable that such privileges should be obtained or cannot be effected by the acts of the individuals constituting the company, the directors to procure a charter of incorporation or act of parliament; § 101. No proprietor to plead in abatement the non-joinder of others; § 102. Directors may effect insurances in foreign parts, and employ agents abroad; § 103.

The first deed of settlement contained all the foregoing provisions; being printed on pages 10–42, of the Transcript of Record.

First Act of Parliament, in 1836.

All this was not sufficient. It was deemed necessary to have special privileges, which could not "be effected by the acts of the individuals constituting the company," (see § 101 above,) and an act of parliament was obtained.

This act, reciting the contemplated difficulties in carrying on the business of the company, in recovering debts, maintaining actions, and prosecuting indictments; provided that *the company* MIGHT *sue in the name of certain specified officers; that all actions and proceedings against the company* MUST BE *commenced, instituted and prosecuted against said officers;* that in all indictments the property of the company might be laid to be in said officers; *and that the death, resignation or removal of such officers shall not abate any action.* § 1, pages 52–54. *Members of the company are authorized to sue the company, and be sued by it, as if strangers.* §§ 2, 3. Execution upon any judgment

recovered against the specified officers may be issued against any director or proprietor; § 6. All judgments and decrees against said officers to bind the company; § 7. Individual proprietors may sue said officers; and they in their turn may sue the individual proprietors; § 8. This act not to be deemed to incorporate the company; § 13; but to be deemed a public act; § 11. See Transcript of Record, pages 52–58.

By the foregoing act of parliament, this company was put upon the same footing as a corporation, in regard to all matters connected with the bringing of actions in courts.

Second Act of Parliament, in 1847.

All this was not sufficient. In 1847, they wished for further privileges, which the preamble says could not "be effected without the authority of parliament." Page 60, at top.

By that act the name of the company was changed; § 1. The company were authorized to sell and buy annuities, and to substitute policies granted by the company for others; §§ 2, 3. A certain section of the former act of parliament was repealed; § 5. The act not to be deemed to incorporate the company; § 7; but to be deemed a public act; § 9.

See Transcript of Record, pages 59–61.

First Supplemental Deed of Settlement, in 1851.

A second deed of settlement was made in 1851, reciting the acts of parliament above referred to, ratifying various acts of the directors in allotting shares to foreigners, for the purpose of extending the business of the company in foreign countries, authorizing the directors to appoint local boards of directors, with various provisions concerning the same; and then *empowering the directors to obtain "a charter or other act of recognition from any foreign government in whose dominions any such local board of directors may be established, in such form and for such purposes as they may deem advisable and be able to procure."* § 11, page 45.

See Transcript of Record, pages 42–46.

Second Supplemental Deed of Settlement, in 1863.

A third deed of settlement was made in 1863, reciting (amongst other things) a resolution passed by the proprietors

in 1859, *converting the capital of the company into stock; and directing stock to be issued and held in lieu of shares;* (see page 48, at top) and carrying out that resolution, by the formal conversion of the capital into stock.

See Transcript of Record, pages 46–51.

Third Act of Parliament, in 1864.

A new act of Parliament was passed in 1864, uniting and amalgamating this company with another similar company, called the Globe Insurance Company, ratifying and confirming the amalgamation agreement which had been entered into between the two companies, *and making the same binding upon all persons and corporations interested in their respective capitals, stocks, funds,* &c., and changing the name of the company by inserting "Globe" therein. The conversion of the company's capital from shares into stock was confirmed; § 8; the directors were authorized to grant perpetual annuities; § 10; and various other provisions were made, enabling the new company conveniently to carry on its business.

To this is appended the amalgamation agreement referred to.

See Transcript of Record, pages 62–72; and 72–82.

Now, by an examination of the foregoing documents, it will appear that in the first place this company by their deed of settlement made provisions and took upon themselves powers which are inconsistent with the common law applicable to partnerships. No partnership could be carried on under such a deed, without legislative sanction.

For instance, carrying on business by means of directors, and depriving the members of all voice in determining matters; providing that no member shall vote if any calls are unpaid; arranging for the increase or diminution of the capital stock, and the admission of new members, without the consent of all the members; forbidding the members to inspect the books; authorizing the directors to sue for instalments payable on shares, and to purchase and sell shares of their own capital for the benefit of the company; declaring shares forfeited, on certain conditions; and providing by implication that the company shall not be dissolved, without a two-thirds vote; that the death or bankruptcy of a partner shall have no effect on the company;

are all inconsistent with the ordinary rules governing partnerships.

But it was entirely in vain, with the aid of all the provisions that were contained in the deed of settlement, or that could be included in a private agreement among individuals, to attempt to stretch the law of partnerships far enough to cover the business of this company.

Accordingly acts of parliament were obtained, which gave them in direct terms the following powers :—

1. That they might sue and be sued in the name of one individual.
2. That actions should not abate by the death of that individual.
3. That the company might sue and be sued by members of the company.
4. That an amalgamation with another company should be binding on all of their members, whether consenting or not.

Besides this, there was a general recognition by parliament of their arrangements for a perpetual succession of members, by transfer of shares.

After these various acts of parliament, what single quality or characteristic of a corporation does this company lack? There is not one.

The members of this company are individually liable for its debts and contracts. But the exemption from individual liability is not now (however it may have been heretofore) a characteristic test of a corporation. The corporations are numerous where there is a limited, or an unlimited, individual liability on the part of the members. Angell and Ames on Corp., §§ 605–609, and cases cited.

What are the characteristic tests of a corporation?

Kyd says: "A corporation, or a body politic, or body incorporate, is a collection of many individuals, united into one body, under a *special denomination*, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting, in several respects, as an *individual*, particularly of taking and granting property, of contracting obligations,

and of suing and being sued, of enjoying privileges and immunities in *common*, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation, or at any subsequent period of its existence."

Kyd on Corporations, (Introd.) 13.

Then he enumerates the following, as giving the complete idea of what is necessary to a corporation; rejecting certain incidents which before his time had been deemed essential.

1. To have perpetual succession, under a special denomination and an artificial form.

2. To take and grant property, contract obligations, sue and be sued by its corporate name, in the same manner as an individual.

3. To receive grants of privileges and immunities, and enjoy them in common.

Kyd, 70.

"Among the most important properties [of a corporation] are immortality and individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual."

Dartmouth College v. *Woodward*, 4 Wheat. 636.

"The great object of a corporation is to bestow the character and properties of individuality on a collective and changing body of men."

Providence Bank v. *Billings*, 4 Pet. 562.

"The essence of a corporation, according to Mr. Kyd, consists only of a capacity to have perpetual succession, under a special denomination, and an artificial form, and to take and grant property, contract obligations, and sue and be sued by its corporate name, and to receive and enjoy, in common, grants of privileges and immunities."

2 Kent Com. (6th ed.) 278.

Angell & Ames on Corp. § 110.

"The object of the institution is to enable the members to act by one united will, and to continue their joint powers and prop-

erty in the same body, undisturbed by the change of members, and without the necessity of perpetual conveyances, as the rights of members pass from one individual to another." 2 Kent Com. (6th ed.) 266.

"One of the *peculiar* properties of a corporation is the power of perpetual succession; for in judgment of law it is capable of indefinite duration. The rights and privileges of the corporation do not determine or vary upon the death or change of any of the individual members. They continue as long as the corporation endures." *Ib.*

"A corporative aggregate is a collection of individuals united in one body, under such a grant of privileges as secures a succession of members without changing the identity of the body, and constitutes the members for the time being one artificial being, or legal being, capable of transacting some kind of business like a natural person. It does not occur to my mind that anything else can be essential to the definition."

Mr. Justice Bronson in *People* v. *Assessors of Watertown*, 1 Hill, (N. Y.) 620.

It has been already observed that a common seal is not essential to a corporation. Formerly a corporation could only contract by deed; and then a common seal was important. Kyd, 259–267. But now, this is all done away; and a corporation acts by vote, and by means of agents. Most important acts of corporations are done by officers, simply by virtue of implied powers. The law of corporations has made great strides in advance, in this respect. Now, a corporation may use what seal it will. Any seal will be sufficient. Even a scroll is probably a good corporate seal, in those states where individuals may use a scroll. See *Stebbins* v. *Merritt*, 10 Cush. (Mass.) 27, 34; *Tenney* v. *Lumber Co.*, 43 N. H. 343; *Bank of Middlebury* v. *Rutland and Washington Railroad Co.*, 30 Verm. 159, 168, 169; Angell and Ames on Corp., §§ 217, 218, 219, and cases cited.

But the present company had a common seal, sometimes called a corporate seal. In the various documents appended to the report of the case, *a corporate seal* was called for in one

instance, and such a seal was used to stamp the documents; and in another instance the *common seal* of the company was called for, and affixed. All of these documents bore a seal with a device and inscription, exactly corresponding to our common corporation seals. See documents AA, B, C, D, on pages 6 and 7 of Transcript of Record.

So as to the *name* of a corporation: it is not necessary that a corporation be confined to a single name. It has long been the law that a corporation "may have one name by which it may take and grant, and another name by which it may plead and be impleaded." Kyd, 229, 230. Angell and Ames on Corp., § 100. A corporation may be enabled to sue in the name of an officer, as its president.

Indeed, it is by no means certain, at the present day, that it is necessary for a corporation to have any fixed name at all.

In determining the present question, it is therefore quite immaterial to consider whether parliament enacts that this company shall or shall not be deemed to be a corporation. It is not necessary that there should be any express declaration that a body shall be deemed to be a corporation; because the body is to be known and judged of by its attributes. 2 Kent Com. 276. The court may adjudge this body to be a corporation, although parliament has not styled it one, or has declared that it shall not be deemed to be one. See remarks of Cowen, J., in *Thomas* v. *Dakin*, 22 Wend. 103.

III. But there is a satisfactory explanation of the provision in the acts of parliament, that this company shall not be deemed to be incorporated thereby. It is, and always has been, the policy in England not to confer what are considered *full* corporate privileges on trading corporations. But it has been the custom there to confer upon such companies, and especially upon insurance companies, certain corporate privileges, which make them *quasi* corporations, even though the acts conferring the privileges provided that nothing therein contained shall extend to incorporate the companies. Angell and Ames on Corp., §§ 57, 58, 59; *Van Sandau* v. *Moore*, 1 Russ. Ch. R. 441; *Wills* v. *Sutherland*, 4 Exch. 211.

There are accordingly in England three classes or kinds of companies.

But the right of entering a state, and remaining there for the purpose of carrying on a permanent business, with a view to profit, and thus of gaining all the benefits of citizenship, without also submitting to the corresponding duties and liabilities, cannot by any just construction be included in this provision of the constitution. Citizens of Massachusetts, in consideration of the rights which they enjoy under the laws, are bound to perform various duties to the public; as, for example, to serve in the militia: Gen. Sts. *c.* 13, § 1; to accept and perform the duties of various offices, as town clerk, selectman, town treasurer, constable, assessor of taxes, surveyor of highways, fire ward, under a pecuniary penalty in case of refusal; Gen. Sts. *c.* 18, §§ 40, 53, 60, 74; *c.* 24, § 2; to serve on juries; Gen. Sts. *c.* 132, § 1. The citizens of every state are liable to various onerous duties, which do not rest upon those inhabitants who are not citizens. And the Declaration of Rights, in the Constitution of Massachusetts, recognizes that the rights and duties of citizens are correlative. Art. X. Those who would enjoy the full rights of citizens should therefore submit to the duties incumbent on citizens.

A fortiori, a stranger, who does not come to reside in a state, but keeps himself away, and does not submit his poll or his personal property to taxation therein; but who undertakes to carry on business through the agency of others; can by no means claim the right to do so upon the same terms as citizens. The citizen is taxed for his personal property, wherever situated, for his income, and for his poll. Shall a capitalist from another state be allowed to send agents into Massachusetts, to make contracts upon his credit, and reap profit out of the citizens and inhabitants, while he in no wise contributes towards the common duties and burdens? while not even his personal property, his income, or his poll are taxable there? and while he furnishes no guaranties, by the presence of property, or by his personal presence, within the state, by which effectual remedies can be enforced against him under the laws? Such a person does not stand upon the same footing with citizens.

Legislation like that here in controversy has been upheld in New York and New Jersey. See *Fire Department* v. *Noble*, 3 E. D. Smith, 440; *Tatem* v. *Wright*, 3 Zabr. (N. J.) 440, 441.

VII. The concluding ground of argument heretofore taken by the plaintiffs in error, that they as subjects of Great Britain have certain rights under the treaty which this law infringes upon, seems to be wholly disposed of by the recent decision in the case of *Paul* v. *Virginia*, 8 Wallace, 168. The business of insurance is not trade or commerce, within the meaning of the treaty.

Nor can it for a moment be supposed that this court would give any such construction to a treaty, as to allow to foreigners greater rights or privileges in any state than citizens of other states have therein, unless constrained thereto by the clearest use of language.

CHARLES ALLEN,
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